*Volume XII.*] *June, 1897.* [*Number 2.*

# POLITICAL SCIENCE QUARTERLY.

## THE FINANCIAL RECORD OF THE SECOND CLEVELAND ADMINISTRATION. I.

IT is a maxim of politics that the administration in power during a period of hard times goes down to history with a heavy charge against it. For this there are several causes. Industrial distress, in the first place, is a sure breeder of both social and political unrest. Under a despotism such unrest finds voice in insurrection; with suffrage in the hands of the people, a change of administration is demanded. In neither case is it essential that adopted public policies shall be proved to have been influential in the trade disturbance; it is not even necessary that the plans of the existing government shall have passed into law. It is enough that the administration and the unfavorable times are coexistent; the *post hoc* argument is nowhere used with such assurance and success as on the stump. Certain legislation has been enacted or proposed; a period of financial distress has followed — the average citizen reasons no further.

If such reasoning involved as a consequence only the expression of contemporary criticism, government would pursue its course and intelligent history would straighten the matter out. But the success of an administration depends on the support of a united party; and such support depends in turn on popular endorsement at the polls. This is supposed to be peculiarly true of the British governmental system, where the administration holds office so long as it commands majorities, and no longer. In point of fact, however, the net result of the Ameri-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

can system is substantially the same. The president and his cabinet do not, indeed, on the development of hostile legislative and popular majorities, directly surrender office to the opposition. Nominally, they hold power until their term is ended. But with the disappearance of their party's majority in Congress, or — worse than this — with disintegration and revolt within that party, the policies of an administration are distinctly blocked. Constructive legislation becomes at once impracticable; even remedial legislation is obtained only by favorable chance. An administration high in favor with the people finds willing adjutants on the floor of Congress; but when a president has lost his hold upon the public, his recognized Congressional supporters may be counted on the fingers of one hand. Every administration that has passed through a period of hard times has had to face this experience. So far from reckoning on loyal support for administration measures, the president at such a time has to devote his influence and authority chiefly to curbing the excesses of his party. The more severe the pressure of industrial distress, the more urgent, in many sections of the country, grows the demand for radical legislation. The whole administrative term becomes a chapter of blind moves and checkmates; there is no coherent policy; eventually and inevitably the party which the administration nominally represents is hurled out of power by a large adverse majority at the polls. To those who read from the surface only, the work of such an administration seems to be a humiliating failure; its promises stand unredeemed, and it retires from office with the seal of uncompromising public disapproval.

In this general sketch it is not difficult to read the story of the late administration. What people are apt to forget, however, is that the picture equally portrays every administration unfortunate enough to have fallen upon a similar financial period. To this day the very able and conservative Van Buren administration is commonly regarded as a failure; and so it was, if distinct executive achievement is the test. But the panic of 1837, like the panic of 1893, burst on the country two months after inauguration day. On March 4, Van Buren entered office;

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

on May 10, the first great bank failure in New York occurred; thenceforward public affairs consisted largely in repeated deadlocks between an unpopular executive and a discontented Congress. In the fall of 1837 the great pivotal states, which a year before had given the Democratic Party 170 electoral votes against 73 for the leading opposition party, went overwhelmingly against the administration. When Van Buren in 1840 stood for reëlection, 234 electoral votes out of a total of 294 were cast against him. Precisely similar results followed the panic of 1857. The industrial unrest was then so completely overshadowed by the crisis of secession that it is hard for history to trace its influence; yet it is altogether reasonable to suppose, in the light of political experience, that the bank suspensions in the fall of 1857, the fifty-cent decline in wheat during the next six months and the seven-cent fall in cotton, with the virtual state of barter to which interior communities were reduced, played a part in the overwhelming anti-administration majorities of 1858 which was second only to that played by the Kansas-Nebraska scandal. These commercial incidents alone would have created, in 1858 and 1860, majorities for the Republican opposition; political outrage only emphasized the situation. The pro-slavery clique controlling the Buchanan administration knew perfectly well what was before their party. As history sufficiently attests, it was the certainty of defeat in the coming national campaign of 1860 which brought to a head the demand for disunion.

In 1872 — to come down now to recent times — the Republican presidential ticket was elected by a popular plurality of 763,007, with a new House of Representatives Republican by a clear majority of 105. Hard times began, however, with the collapse of November, 1873; and the Congressional elections of 1874 so completely overturned the huge Republican majority as to give control of the House to the opposition party by a majority of 67. Strife and repeated deadlocks ensued as usual between the executive and Congress, and within the ranks of the administration party; and in the presidential vote of 1876, although the Republican candidate was counted in, the 763,007

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

plurality of 1872 was changed to a Democratic popular plurality of 252,224.

These illustrations from our own history are useful as proving unmistakably that an administration unlucky enough to enter office on the eve of financial trouble is a victim of circumstances beyond its own control. Nor is this rule by any means restricted to American politics. The industrial distress beginning in 1873 reversed party majorities in England exactly as it reversed them in the United States. The famous Gladstone ministry, which had for six successive years held almost unprecedented power over Parliament and the people, entered then on six months of party disintegration, followed, in the general elections of 1874, by overwhelming political defeat. After the London panic of 1866, three British ministries were successively overthrown within the compass of three years; and exactly similar results followed the hard times of both 1857 and 1884. At the very time when the second Cleveland administration was confronted with a disloyal party and with adverse popular majorities, a British ministry was losing all semblance of control in Parliament. In the middle of 1895 the opposition was at length returned with one of the largest majorities in Parliamentary history. When, indeed, it is capable of proof that nearly every great popular insurrection against established government — for example, the revolt of the British Commons in 1642,[1] the French Revolution of 1789[2] and the general European uprising in 1848[3] — has been brought to an immediate head by the pressure of hard times, the troubles of Mr. Cleveland's second administration will be recognized as only a later illustration of perhaps the most familiar phenomenon in history.

An administration which goes out of office, after such an experience, with all its public undertakings acknowledged failures, has an excuse which history at least must recognize. An administration which achieves under these circumstances any

[1] Thorold Rogers, Economic Interpretation of History, p. 266.
[2] Taine, La Révolution, ch. i, pt. i.
[3] Juglar, Crises Commerciales, Introduction, 2d ed., p. xvii.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

distinct and permanent public policy has accomplished a marvel in parliamentary government. It is precisely this remarkable achievement which history will place to President Cleveland's credit. The late administration had indeed to labor under a double handicap. Disordered private trade will of itself, as we have seen, obstruct the path of any government; but disordered public credit and an embarrassed exchequer bring governments close to the bounds of anarchy. Both of these formidable evils confronted Mr. Cleveland when he entered office. Before proceeding further, it will be useful to show exactly how much of this treasury demoralization was inherited from the preceding administration.

Prior to 1890 the national revenue had largely exceeded annual expenditures. In the first place, the productiveness of import duties under the tariff act of 1883 had exceeded all expectations; between 1885 and 1890 the annual customs revenue increased $48,000,000.[1] At the same time a second and equally important factor had been at work in the shape of decreased annual expenditures. Pension and miscellaneous appropriations had, it is true, been rising with the automatic rise in revenue; but so large had been the simultaneous redemption of the government's funded debt that the annual interest charges, which in the fiscal year 1879 were $105,327,949, and in 1882 were $71,077,206, had fallen in 1890 to only $36,099,284.[2] In these two sets of figures lies the key to what many people still regard as mystery, — the fact that the government's annual surplus revenue rose from $63,463,771 in 1885 to $119,612,116 in 1888, and that in spite of lavish expenditure for bond redemptions, the treasury seemed, in 1888, to be rapidly absorbing into its own vaults the entire circulating medium of the nation.

[1] The total customs revenue for the fiscal year 1885 was $181,471,939; for the fiscal year 1890 it was $229,668,584, the maximum in the country's history. The value of dutiable imports entered at our custom houses for consumption was in 1885 $386,667,820, in 1890 $507,571,764. — Report of United States Bureau of Statistics, 1892, p. lxxvii. The average rate of duty annually collected within this period ranged from 44.41 per cent to 47.10.

[2] See the comparative classified table of the annual governmental expenditures appended to the annual reports of the secretaries of the treasury.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This process of absorption had its good side and its bad side. Contraction of the currency, through the heaping up in the treasury, by August, 1888, of $330,763,985 idle money, undoubtedly prevented the worst effects of compulsory silver coinage. In 1884 the annual charging of the currency with $24,000,000 overvalued silver dollars threatened the treasury with serious disaster;[1] four years later this was apparently a factor of little moment.[2] On the other hand, no business man could look with equanimity on a system which removed each year from the circulating medium, with the regularity of an automaton, some fifty million dollars. When such accumulations result from the sale of government bonds, the new bonds, used as a basis for national bank currency, provide the means of filling any actual void in circulation. But in 1888 and 1889 precisely opposite results were witnessed. The overflowing treasury reserve was thrown back on the markets through redemption, at a heavy premium and by public purchase, of the very bonds used as collateral for existing bank-note issues. Between July 1, 1888, and July 1, 1890, during which period the government was rapidly calling in its debt, the treasury's total surplus did indeed decrease $63,174,373.[3] But the total bank-note circulation simultaneously decreased $66,397,546.[4] In other words, the aggregate circulating medium actually lost by the operation.

These facts were imperfectly appreciated by the public men of 1890. Most unfortunately, the whole matter was complicated by domestic politics of the narrowest sort. Platform declarations and campaign speeches had pledged the dominating party

[1] Secretary McCulloch, Annual Treasury Report, 1884, p. xxxi. See also the pessimistic letter of John Sherman to President-elect Garfield, July, 1880. — Recollections of John Sherman, II, 779.

[2] "The ownership of silver by the government again was largely decreased, in spite of the increase of total stock of the silver dollars in the country by the coinage of sixteen months."— Secretary Fairchild, Annual Treasury Report, 1888, p. xxix.

[3] The total treasury holdings in excess of certificates outstanding were June 30, 1888, $319,067,278; June 30, 1890, $255,892,905. — Annual comparative tables, United States Treasury Reports.

[4] Total national bank notes outstanding June 30, 1888, $252,368,321; June 30, 1890, $185,970,775.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to a revenue system which, designed primarily for protection, could by no possibility be estimated in advance. Legislative precedent had riveted the practice of voting appropriations without the slightest reference to the probable income of the year. Tradition had so imbued the people's mind with dread of bank-note issues not secured by government collateral, that the adoption of a rational banking system was not even discussed. Such a situation, with the business community demanding instant relief, resulted exactly as might have been anticipated. On Sept. 30, 1890, Congress adopted, strictly by vote of the administration party, an "act to reduce the revenue." This act levied on the majority of articles heavily increased tariff duties, with the avowed purpose of cutting down dutiable importations. But it also removed the greatest but one of all the revenue-producing taxes, the sugar tariff; and with this single blow struck off $55,000,000 annual revenue.[1] Without bringing into question the wisdom of the general purpose of this act of 1890, the law may properly be described as an utterly haphazard and unscientific measure. Certainly, few laws have ever more thoroughly belied in actual results the predictions of their authors. The framers of the bill named $43,000,000 as the outside limit of resultant revenue reduction;[2] in actual fact, it cut down annual income long before the disturbances of 1893 by no less a sum than $52,205,620.[3]

[1] In the fiscal year 1889, duties collected on sugar and molasses amounted to $55,976,228; in 1890 to $55,150,819; in 1891 (the old tariff applying during part of the year) they were $32,468,339; in 1892 only $76,987; in 1893 only $165,196; and in 1894 only $251,039. — United States Statistical Abstract for 1896, p. 16. Of course the most productive tax on any article, even in 1890, was the internal revenue tax on spirits.

[2] Senator Aldrich, who had charge of the measure in the Senate, said immediately before the final vote: "I now estimate the aggregate annual reduction, made by the bill as reported by the conference committee, at from forty-two to forty-three millions of dollars."— *Congressional Record*, Sept. 30, 1890.

[3] Following are the figures:

| Fiscal year. | Total imports for consumption. | Of which dutiable. | Amount duty collected. |
|---|---|---|---|
| 1890 | $773,674,812 | $507,571,764 | $226,540,037 |
| 1891 | 854,519,577 | 466,455,173 | 216,885,701 |
| 1892 | 813,601,345 | 355,526,741 | 174,124,270 |

— Bureau of Statistics, Annual Report, 1892, p. lxxvii.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This of itself was a violent move, especially when all experience had taught that, if a trade reaction were to come with the tariff law unchanged, an even larger reduction, both in importations and in resultant customs revenue, would be inevitable.[1] Had Congress, however, stopped with the reduction in the revenue, its measures would at least have been defensible. But the notion had got abroad that, since the surplus was of itself an evil, Congress was justified in using any means available to scatter it. Accordingly the Congress of 1890 went to work expanding by wholesale its annual appropriations — an easy task in any legislature. Between 1889 and 1893 annual pension expenditures increased $71,732,778; annual miscellaneous disbursements (including river and harbor appropriations), $23,068,735; and war, navy and civil outlay in such proportion as to increase the annual expenditure by the enormous sum of $115,218,431.[2] In 1889, before the annual sinking-fund requirement had been met, the surplus revenue was $105,053,443.[3] Increased expenditures alone, as already noted for the fiscal year 1893, would have used up this annual surplus, even supposing the revenue to stand unchanged.

But, as we have already seen, the annual revenue also was cut down some $52,000,000 in the very face of the increase in appropriations. It is not surprising, therefore, that in 1892, under the same administration, the secretary of the treasury should have begun complaining that the surplus revenue was no longer large enough to meet the annual sinking-fund requirement.[4] Nor is it matter for wonder that on March 1, 1893, immediately before the Cleveland administration entered office, the government reported only $130,262,414 available surplus in the treasury, or barely $30,000,000 over the stipulated gold

[1] Recollections of John Sherman, II, 1006.

[2] These are the actual figures:

| | Expenditures for | | |
|---|---|---|---|
| Fiscal year. | Pensions. | Miscellaneous. | Total. |
| 1889 | $87,624,779 | $80,664,064 | $240,995,131 |
| 1893 | 159,357,557 | 103,732,789 | 356,213,562 |

[3] Secretary Windom, Annual Treasury Report, 1889, p. xxii.

[4] Secretary Foster, Annual Treasury Report, 1892, p. xxvii.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reserve.[1] During the next nine months of 1893, with the revenue act of the Fifty-first Congress and the appropriation laws of the Fifty-second still in force, the revenue fell $38,600,000 short of current expenditure.[2] It is a simple matter of arithmetic to show that at the opening of the new administration the trenching on the $100,000,000 gold reserve maintained against outstanding legal tenders was an impending certainty.

Secretary Sherman has declared in a published article, written to explain the breakdown of the treasury finances during 1893, that

> the deficiency of revenue was the primary cause of the demand for gold for United States notes; [and he adds] nor would deficiencies have occurred had not the president and both houses of the Fifty-third Congress, then in political sympathy, united in passing a law reducing the revenue below expenditures for the first time since the close of the war.[3]

This statement sums up an opinion very generally held by people less competent than Mr. Sherman to analyze the facts. It ought to be answered very decidedly, because it is a most extraordinary perversion of the truth of history. The Fifty-third Congress began its work on Aug. 7, 1893. Its first appropriation bills, outside of some small deficiency legislation, were passed in July and August, 1894, and they affected only the operations of the fiscal year beginning July 1, 1894.[4] Its first revenue bill, the Wilson Tariff Act, became a law Aug. 13, 1894,[5] and went into actual effect between then and the following January.

In other words, the revenue laws and the appropriation laws of the preceding administration were in full force until midsummer, 1894. Yet the annual treasury report for the year ending June 30, 1894 — and ending, therefore, nearly two months before the Wilson law went into operation — reported

[1] Annual Treasury Reports, comparative tables.

[2] Annual Treasury Reports, 1893, p. 26; 1894, p. 22.

[3] "Deficiency of Revenue the Cause of Financial Ills," by John Sherman, *Forum* for April, 1896, pp. 133, 139.

[4] Tribune Almanac for 1895, pp. 22, 36.

[5] *Ibid.*, p. 34.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a deficit of $69,803,260.[1] The monthly deficit, in fact, was largest in the quarter ending Sept. 30, 1893[2] — a period nearly three months prior even to the introduction of the Wilson bill in Congress.[3] Six months before the president and Congress, as Mr. Sherman intimates, had "united in passing a law reducing the revenue below expenditures," a bond issue had already been forced to protect both gold reserve and treasury surplus from absolute exhaustion.[4] Whatever mischief the Fifty-third Congress may have done later on — and it has a sufficient reckoning to meet — impartial history will not hold it responsible for the breakdown of the treasury. We have already seen at whose door that discreditable episode in finance must lie. Mr. Sherman's imputation is directly contradicted by the facts.

As between the two political parties, responsibility for this stupid and mischievous financiering must be divided. If the Republican House of 1890 and 1891 set the pace for reckless appropriations, the Democratic House of 1892 and the spring of 1893 maintained it. The same may be said of the silver-purchase act of July 14, 1890, which was thrown as a sop to free-silver coinage advocates of varying political connections. But both the revenue law and the silver-purchase law were fathered and advocated by the administration of 1890;[5] for the ill effects of both, therefore, impartial history must hold responsible the administration which endorsed them. In particular, the silver-purchase act, throwing out annually $50,000,-

[1] Secretary Carlisle, Annual Treasury Report, 1894, p. xxv.

[2] Excess of expenditure over revenue during the three months ending Sept. 30, 1893, was $17,560,072. — Annual Treasury Report, 1894, p. 22.

[3] The bill was reported by Mr. Wilson, Dec. 19, 1893. — McPherson's Handbook of Politics, for 1894, p. 182.

[4] On Jan. 31, 1894, not only was the gold reserve $34,000,000 below the legal requirement, but the treasury's additional balance of silver and legal-tender notes was only $12,262,708. The revenue deficit during the next three months was $18,332,000.

[5] Secretary Windom, Annual Treasury Reports, 1889 and 1890; President Harrison, Annual Message to Congress, Dec. 3, 1889. It is fair to say that the special message on the silver-purchase plan, promised in this first annual message of Mr. Harrison, was never submitted. On the other hand, as regards the president's attitude, see Senator Sherman's remarkable admission in Recollections of John Sherman, II, 1070.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

000 fresh demand liabilities of the government[1] at the moment when that government's available assets were contracting at an exceedingly dangerous rate,[2] was a financial measure of such utter recklessness that no catastrophe which followed ought to have seemed mysterious. The total circulation of these notes was at its largest when, as we have seen, even the treasury reserve maintained against the original legal-tenders had for the first time fallen below its legal minimum.[3] Months before the election of 1892, conservative foreign critics were pointing out the certain consequence of this reckless financiering.[4]

With the Cleveland administration, as with Van Buren's in 1837, the long-predicted crisis developed almost in the inauguration week. No intelligent person supposes that the trade collapse was caused by the party change in government; such theories are made for children, stump speakers, and people whose reasoning powers are bounded by their prejudices. Nor

[1] Treasury notes, issued in purchase of bullion, held in the treasury and in outside circulation:

| | In treasury. | Outside circulation. | Total. |
|---|---|---|---|
| July 1, 1891 | $9,879,713 | $40,348,704 | $50,228,417 |
| July 1, 1892 | 3,453,379 | 98,258,692 | 101,712,071 |
| July 1, 1893 | 6,334,613 | 140,855,614 | 147,190,227 |

— Annual Treasury Report, 1893, p. cxiv.

[2] Amount of gold coin, silver dollars and legal-tender notes in the treasury in excess of certificates outstanding:

| | Gold. | Silver. | Legal tenders. | Total. |
|---|---|---|---|---|
| July 1, 1890 | $190,232,405 | $26,699,317 | $11,804,190 | $228,735,912 |
| July 1, 1891 | 117,667,723 | 22,112,714 | 11,366,996 | 151,147,433 |
| July 1, 1892 | 114,342,367 | 5,265,528 | 8,696,590 | 128,304,485 |
| July 1, 1893 | 95,485,414 | 6,797,135 | 20,398,866 | 122,681,415 |

[3] On June 30, 1893, legal-tender notes in circulation outside the treasury aggregated $471,630,040, against $334,688,977 on June 30, 1890. The treasury's total gold holdings in excess of gold certificates outstanding was $95,485,414 on June 30, 1893, against $190,232,405 in 1890. — Annual Treasury Report, 1893, pp. cxv, 96.

[4] "It [the United States Treasury] is likely before long to become involved in serious difficulties. Its reserve is approaching the 'apprehension point'; the point, that is, at which people will begin to fear that its stock of gold will not be sufficient to meet the demands that may be made upon it, and will be disposed to make a rush to convert their notes, lest, if they delay, conversion will be impossible."— *London Economist*, July 9, 1892. See also the *Economist* of Feb. 20, 1892.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

did the panic of 1893 result wholly from the legislation of the Fifty-first Congress. As we can now in retrospect discover plainly, a season of trade reaction was already drawing near and would probably have been encountered even with wise and prudent laws upon the statute-books. But it is the terrible responsibility of that Congress that it blindly and recklessly crippled the treasury's resources, and left it helpless before the storm. It was the revenue and appropriation laws of the Harrison administration which brought the government, when the blight of panic fell upon the nation's trade, to the verge of bankruptcy. It was the currency law of that administration which wrecked the credit of the treasury at a moment when the stability of the Bank of England was needed to resist the shock. He who denies these two conclusions, in the light of the evidence which I have submitted, must be either blinded by partisanship or incapable of economic reasoning.

At the close of 1892 the trade movement itself was bringing matters to a head. Our markets were out of joint with the markets of the world. The export trade of the United States fell, during the nine months ending March 31, 1893, $163,430,018 below that of the year preceding. This decrease resulted measurably from the smaller grain harvest in the United States and larger crops abroad. But no such explanation applied to the import trade. While exports decreased, imports rose in the same period by the enormous sum of $90,572,354. During the nine months ending March 31, 1892, exports had exceeded imports by $209,383,096; in the last nine months of the Harrison administration imports were in excess by $47,119,276.[1] This was a record unprecedented since the days of irredeemable paper money. To offset the foreign debits thus incurred, there was no longer any westward flow of European capital. With the treasury approaching certain embarrassment and the currency threatened with depreciation, invested capital was withdrawing in enormous volume from our markets. Europe not only sold American securities, but recalled its floating capital invested in our open money markets. To make the settlement for this

[1] Bureau of Statistics, monthly Foreign Commerce Report for March, 1893.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

increasing heap of immediate liabilities, there was nothing left but gold. During these same nine months $34,943,431 in gold was sent abroad;[1] by the middle of April upwards of $5,000,000 weekly was going out. Nearly all this export gold was obtained from the sub-treasury through presentation of legal-tenders for redemption; the city banks, ten months before, had been compelled to cease supplying gold to banking depositors.[2] As a result, the treasury gold reserve, on April 23, declined to $95,432,000.[3]

When the government's gold balance fell below the $100,000,000 mark fixed by tradition and authority,[4] a very serious problem arose for settlement. It was largely treasury notes, issued under the law of 1890, which had been presented for redemption.[5] The law provided that

> upon demand of the holder of any of the treasury notes herein provided for, the secretary of the treasury shall . . . redeem such notes in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law.[6]

This clause appears at first glance to be a hodge-podge compromise, and such in fact it was. Secretary Windom, who is entitled to more of the discredit of the law of 1890 than is commonly assigned to him, wished to have even the uncoined bullion used in redemption of the notes.[7] In the House, this extraordinary suggestion had been promptly brushed aside by a substitute measure, under which the new treasury notes, like the older legal-tenders, were made redeemable "on demand, in coin."[8] The Senate cancelled all the essential provisions

[1] Bureau of Statistics, monthly Foreign Commerce Report for March, 1893.

[2] See POLITICAL SCIENCE QUARTERLY, X, 587.

[3] Daily tables of cash balances, United States Treasury.

[4] See POLITICAL SCIENCE QUARTERLY, X, 576.

[5] During the three months ending March 31, 1893, gold paid out from the treasury in redemption of old United States notes was $13,812,348; in redemption of treasury notes of 1890, $16,439,386. — Annual Treasury Report, 1893, p. 12.

[6] Act of July 14, 1890, section 2.

[7] Annual Treasury Reports, 1889, p. lxxiv; 1890, p. xlvii.

[8] Conger substitute, House of Representatives, June 5, 1890.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of the House bill, and substituted a flat free-coinage measure.[1] The House, in turn, rejected every amendment of the Senate.[2] The bill as next patched up by the conference committee endeavored to fix on middle ground. It did so in the curious clause already cited.

Judged simply by the successive votes upon the measure, this game of legislative shuttlecock gave little clew to the actual purpose of the bill. More than one speaker, in the debate upon the conference measure, declared that he could understand neither its meaning nor its probable consequences.[3] It is, however, very important to observe that in the course of this debate not one Congressman expressed belief that in an emergency the treasury would refuse to pay out gold to note-holders who demanded it. Many of the debaters argued comfortably that the time would never come when the secretary would be forced to make his choice.[4] Others contended that the law would so advance the price of silver that the note-holder would always be willing to accept that metal in redemption.[5] Both these predictions proved to be totally erroneous. But, on the other hand, it was argued that if occasion for discrimination were by any possibility to arise, the note-holder must be paid whichever metal he desired; for otherwise the pledge of the parity clause would be violated.[6] No speaker openly denied this affirmation; on the contrary, the ultra free-coinage advocates opposed the measure on the explicit ground that the notes would always be redeemed in gold.[7] There was, it is true, much hesitation in subsequent official statements on the matter. Seventeen months after the passage of the act, the Republican treasurer of the United States declared that "the exact status

[1] Passed June 17, by a vote of 42 to 25.

[2] June 25, by a vote of 152 to 135.

[3] "A beckoning hand for an interpreter," was Senator Daniel's description of the parity clause. — Speech of July 9, 1890.

[4] Senator McPherson. — Speech of July 9.

[5] Senator Jones. — Speech of July 8.

[6] Senator McPherson. — Speech of July 9.

[7] Senator Cockrell said: "This compromise here is an abandonment, a total abandonment, of the double standard."— Speech of July 9. He predicted that gold would always be used to redeem the notes, and on that ground opposed the bill.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of the notes has yet to be settled. . . . The new notes will doubtless, in time, be regarded as a loan, secured by a full deposit of silver dollars or bullion."[1] But this is an interpretation which needs itself to be interpreted. Security for a loan is commonly regarded as that which is left in the lender's hands when the borrower defaults; but the actual question here was to decide in what this borrower should pay his debt in order to avoid default. In gold or silver at his own discretion, said one part of the act; and since the law of 1890 provided further for the coinage of enough of the purchased silver to redeem the notes,[2] the treasury was urged to use its option and to proclaim that gold would no longer be paid in redemption.

This was a tempting proposition. In the face of all the impending troubles of the treasury, the government held in its vaults, on April 1, 1893, $106,709,122 worth of silver bullion.[3] If this bullion were to be coined and offered to applicants for redemption of the notes of 1890, the gold reserve would thenceforth be depleted only by the redemption of the older legal-tenders, which, as we have seen, had thus far made up less than one-half of the total government notes presented for redemption.[4] For three days during April, 1893, when the gold reserve had fallen below the hundred-million mark, it was believed at Washington and on the markets that Secretary Carlisle would use the option of the government in tendering silver coin alone for the notes of 1890.[5] The president, how-

Senator Call agreed that "in all these provisions the gold redemption is asserted and is made the essential and the unqualified and the operative and the valuable condition of the bill." — Speech of July 10. These two speakers were free-silver-coinage men. Their view was not directly combated by any of the numerous other debaters. It is also significant that the two strongest silver men on the conference committee, Messrs. Bland and Harris, refused to sign the conference report.

[1] Treasurer Nebeker, Annual Treasury Report, 1891, p. 19.

[2] "After that time [July 1, 1891], he [the secretary of the treasury] shall coin of the silver bullion purchased under the provisions of this act as much as may be necessary to provide for the redemption of the treasury notes herein provided for." — Act of July 14, 1890, section 3.

[3] Annual Treasury Report, 1893, p. 90. This was the cost price; its coinage value was considerably larger.

[4] See note, p. 35.

[5] See market reports, daily papers of the time; also *New York Financial Chronicle*, April 22, 1893, p. 644.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ever, took ground decidedly against this policy. On April 20 Secretary Carlisle declared officially that

> in the exercise of the discretionary power conferred upon the secretary of the treasury by the act of July 14, 1890, he has been paying gold for the coin treasury notes issued for the purchase of silver bullion, and he will continue to do so as long as he has gold lawfully available for that purpose.

On April 23 President Cleveland added an equally decided statement, defining the administration's policy as follows:

> While the law of 1890, forcing the purchase of a fixed amount of silver every month, provides that the secretary of the treasury, in his discretion, may redeem in either gold or silver the treasury notes given in payment of silver purchases, yet the declaration of the policy of the government to maintain the parity between the two metals seems so clearly to regulate this discretion as to dictate their redemption in gold.

This very important precedent must be regarded as President Cleveland's personal decision. In his public statement of April 23 the president did indeed add his

> emphatic contradiction of the statement that the redemption of any kind of treasury notes, except in gold, has at any time been determined upon or contemplated by the secretary of the treasury or any other member of the present administration.

This statement does not, however, affirm that there was in the cabinet no one who had in general favored redemption in silver coin. As a matter of fact, there is sufficient authority for saying that more than one member of the administration had previously advocated, as a feasible resort, the silver-redemption policy. What the personal feeling of the secretary of the treasury was, before the decisive cabinet conference, will doubtless remain a matter of controversial history. Acting alone, it is very possible that he would have tendered silver. Mr. Carlisle's state papers, since the crucial episode of April, 1893, have contained the clearest and most cogent reasoning for the single standard of financial values. That his convictions on the question were sincere and thorough does not, I think, admit of doubt. But the problem of the treasury-note

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

redemption was not as simple as the general question of the standard. Mr. Carlisle's opinions in the past, moreover, subject though they might be to honest reconsideration, undoubtedly predisposed him to the use of silver for the notes of 1890. He voted, as a representative, against the Resumption Act of 1875; as a senator, he voted in favor of the Plumb free-coinage substitute for the silver-purchase bill of 1890. His own declaration of April 20, 1893, was framed, so far as concerned the statement of his previous belief, in very guarded language; and in his annual report of December, 1893, he made no explicit reference to the question.

The decision, however, was in the president's hands. In Jackson's administration, the treasury was regarded as responsible for its acts, not to the president, but to Congress; a secretary of the treasury like McLane or Duane was therefore accustomed to shape his course of action even against the wishes of the president. Opposition by the president to the secretary's policy, or his effort to control it, drew forth in those days Congressional philippics such as Webster's famous speech of May 7, 1834.[1] That theory of the treasury's independence of the president has, however, been entirely abandoned. Now the secretary of the treasury is as much the agent and subordinate of the chief executive as is the secretary of state or the secretary of the interior; and both Congress and the people have acquiesced in the new conception of the office. Entirely aside from this phase of the situation, however, Mr. Cleveland's position was unquestionably right. As we have already seen, the free-coinage senators themselves, in the debate of 1890, declared that adherence to gold payments would be the necessary outcome of the act. This was, in fact, the burden of the whole Congressional discussion of July, 1890; it cannot, therefore, be contended that the president in 1893 applied a new construction. On the contrary, he construed the law as it had been construed even by the Congress which enacted it. That the free-coinage Congressmen opposed the law in 1890 because of such construction, confirms rather than contradicts the

[1] Works of Daniel Webster (ed. of 1872), IV, 105, 106.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

president's interpretation; the law was passed in the face of their publicly expressed predictions.

There was a third alternative suggested, to which some notice may be granted. Mr. Sherman has taken the position, both before and since the events of 1893, that when the resumption fund is drawn upon by presentation of legal-tenders for redemption, the legal-tenders thus redeemed ought to be added to that fund, and ought not to be reissued until the legal reserve is again intact. In 1879, Mr. Sherman, then secretary of the treasury, suggested that the notes thus redeemed should even be used "under the authority of section 3700, Revised Statutes, . . . for purchase of coin or bullion."[1] More recently, he has criticised the Cleveland administration for using "a fund specially pledged for another purpose to meet current liabilities."[2] But for this action, said he, "notes once redeemed" would be reissued "only for gold coin, . . . and the scarcity of currency would create such a demand for it that coin would be freely deposited in exchange."[3]

There cannot be the slightest question that this is the proper means of managing a reserve against outstanding notes. Every successful bank of issue in the world follows the practice, and the United States government, under existing laws, is one of these banks of issue. But proof that this is a scientific policy does not involve the corollary that such course of action would be legal. Had the treasury's total surplus been as large in 1893 as it was in 1889, Secretary Sherman's plan would undoubtedly have been adopted. But in 1893 the surplus was so small, and the government's monthly deficit so large, that refusal to reissue legal-tender notes redeemed would presently have left the government without the means of paying current liabilities. On June 30, 1893, the total surplus in the treasury, outside of fractional silver coin, was $126,664,048.[4] If, therefore, the notes redeemed by use of the $100,000,000 gold reserve were to be consistently locked up from subsequent disbursement, the

[1] Annual Treasury Report for 1879, p. x; for 1880, p. xiii.
[2] *Forum*, April, 1896, p. 140. [3] *Ibid.*
[4] Annual Treasury Reports, comparative tables.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

surplus available for ordinary uses was less than $27,000,000. But in the next six months the excess of regular governmental disbursement over income was no less than $37,453,261.[1] It is therefore clear that, had the notes redeemed been thus withheld, the treasury, before the close of 1893, must have defaulted on its ordinary obligations.

Mr. Sherman has suggested, in addition, that the administration might define certain appropriations to be not "mandatory," and might thereupon, under the circumstances, refuse to meet them.[2] But for such a recourse there is neither precedent nor authority. Mr. Sherman appeals for precedent to the suspension, after the panic of 1873, of annual payments on the sinking fund.[3] He does not, however, notice that when, in 1892, Secretary Foster again, and from the same motive of deficient revenue, suspended sinking-fund purchases, he carefully based his action, not on the fact that the payments were not mandatory, but on the plea that previous bond redemptions in excess of statutory requirements had constructively anticipated charges on that account against the current year.[4] For Secretary Bristow's similar policy, during 1874, the same defense existed. No such apology could be advanced for suspending payment on other Congressional appropriations. Whatever the abstract propriety of such a move, it would have been a *tour de force* of the most unusual character. The older legal-tenders were subject to the provisions of the law of 1878, which declared that "when any of said notes may be redeemed . . . they shall not be retired, cancelled or destroyed, but they shall be reissued and paid out again and kept in circulation." The law of 1890 made similar provision, declaring that the treasury notes "when so redeemed may be reissued." Even Mr. Sherman, in his suggestions of 1879 and 1896, though he began by claiming this existing power for the treasury, ended, somewhat lamely, by complaining that Congress had not authorized such policy.[5]

[1] Annual Treasury Report for 1894, p. 22.

[2] *Forum*, April, 1896, p. 130.

[3] Recollections of John Sherman, II, 1006.

[4] Annual Treasury Report, 1892, p. xxvii.

[5] "Congress neglected to cure the defects pointed out by me as secretary of the treasury in December, 1880, but I hope will correct them now. . . . With such

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The panic which had broken out in the financial markets on the first reports of possible silver payments was for a time allayed by the president's declaration. Since this report, however, was only an incident in the general disorder and not a primal cause, the long-foreshadowed crisis continued to approach its culmination. The first act of the new administration was to summon Congress in extra session for the 7th of August, 1893. Before this extra session met, the country's whole financial structure had collapsed. In May, the panic struck New York with its full force; in June, dozens of interior banking and commercial institutions were going down, crippled by their excessive engagements on securities, grain and real estate;[1] in July, symptoms of general wreck were visible. Every market had fallen into chaos; the New York banks had suspended cash payments and had issued $38,280,000 clearing-house certificates; money was being hoarded by the millions; currency of all kinds exchanged for bank checks at a premium of four per cent;[2] during at least one week, universal bankruptcy seemed inevitable. In the face of such a situation, Congress met, and the president sent a very decided special message, urging repeal of the silver-purchase act of 1890. The essential points of this message may be summed up briefly. The law of 1890 had failed to meet the hopes of its advocates by raising the market price of silver. Its "parity clause" required redemption of the notes in gold if demanded by the holder; the notes were pressing for redemption, and the constant additions to the notes in circulation under the terms of the silver-purchase act threatened continuous depletion of the gold reserve. The seeming imminence of a depreciated silver standard had already wrecked both public and private credit, and such a standard could not be avoided unless the $50,000,000 annual addition to the supply of notes should cease.

The president was not alone in this conclusion. Secretary Sherman, whose ill-fortune it had been to see his own name tradi-

provisions in the law, the resumption fund could not be invaded to meet deficiencies in the revenue." — *Forum*, p. 140.

[1] *Dun's Review*, Dec. 30, 1893, p. 3.

[2] See POLITICAL SCIENCE QUARTERLY, IX, 26–28.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tionally attached to the law of 1890, has since declared: "From the date of the passage of that law to its final repeal, I was opposed to this compulsory clause." [1] Mr. Sherman had in fact himself introduced, in July, 1892, a bill for the repeal of the act of 1890, framed substantially in the terms of the repeal act of 1893.[2] Many Republican Congressmen of influence had taken a similar position. But the situation in the Fifty-third Congress was peculiar. I have referred already to the disintegration which inevitably sets to work, in the ranks of an administration party, at times of trade distress. This principle was visibly in operation, even before the extra session began in August. When Congress opened, and the president's special message was submitted, the storm broke almost instantly. The Democratic Party, as defined by the electoral vote of 1892, was made up of the most heterogeneous elements. No less than eight Democratic state conventions of that year had declared explicitly in favor of the free and unlimited coinage of silver dollars;[3] five others had made more cautious declarations whose actual purport was the same;[4] three had flatly repudiated the sound-money plank in the national party platform.[5] It was, therefore, to be expected that these states would demand a free-coinage bill as the price for repealing the act of 1890, and exactly this occurred. The whole situation was extraordinary enough to foreshadow the open party split of 1896. On the other hand, several Democratic state conventions had denounced emphatically the silver-purchase law, and had demanded its repeal; the same declaration was unconditionally made in the national Democratic platform of June 22.[6]

The proposition for repeal, then, had in its favor the pledge of the Democratic national convention and the attitude of the president. It was also favored, very decidedly, by the fact

[1] Recollections of John Sherman, II, 1189. [2] *Ibid.*

[3] Colorado, Florida, Georgia, Idaho, Kansas, Nevada, South Carolina and Texas.

[4] Illinois, Iowa, Michigan, Minnesota, Missouri.

[5] Colorado, Nevada, South Carolina.

[6] "We denounce the Republican legislation known as the Sherman Act of 1890 as a cowardly makeshift, fraught with possibilities of danger in the future which should make all of its supporters, as well as its author, anxious for its speedy repeal."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that practically all the business communities now ascribed the trade distress to the operation of the law of 1890. It was in point of fact this last-named influence which ultimately governed the vote upon repeal. In the vote of the House of Representatives, August 28, party lines were obliterated. Nominally, this repeal bill was a Democratic measure pure and simple; yet of the 239 votes cast in its favor, 101 were Republican, while of the 109 votes against it the Democrats cast 73. In reality, however, the vote divided not politically, but geographically. From states east of the Mississippi River and north of Tennessee and the Carolinas, only 15 votes were cast against repeal; this section, therefore, contributed all but 45 of the 239 votes which passed the measure in the House.

With the Senate, the case was widely different. During the Harrison administration, there had been admitted to the Union, from among the frontier territories, six new states: Idaho, Montana, North Dakota, South Dakota, Washington and Wyoming. I shall not here discuss the wisdom or unwisdom of the admission of these territories. The phase of the matter which concerns our present topic is the fact that such additions to the community of states added also twelve members to the Senate, and that these twelve new senators were without exception advocates of free coinage. Applying to the Senate thus enlarged the same geographical test as we have just applied to the House of Representatives, it will be found that the states east of the Mississippi and north of the Carolina border had only 38 votes out of the total 88. In other words, the states whose representatives in the House cast practically all the minority vote against repeal held in the Senate a distinct majority.

A two-months' struggle between the administration and the free-silver-coinage faction in the Senate followed — a struggle marked by unusual bitterness of feeling. Had the bill depended wholly for its support upon the avowed opponents of free coinage, it certainly could not have passed the Senate. But free silver coinage was not the single issue; the platform of the Democratic national convention was invoked in favor of repeal; pressure from all business communities, East and West, was

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

very strong; and the administration stood out inflexibly. On October 11, after nearly five weeks of debate, in which every kind of dilatory tactics had been employed by opponents of the bill, advocates of repeal forced a continuous session on the Senate, hoping thus to bring about a vote. The effort failed, after forty hours of filibustering. On October 21 a rumor circulated that a compromise, approved by the administration, had been arrived at. The terms of this reported compromise were the continuance of the silver-purchase law until October, 1894, and the coinage of the silver bullion. The president promptly repudiated any such agreement, and the report, having apparently originated in a real misunderstanding, gave rise to great personal bitterness among the senators. The president's announcement served, however, to break the last hope of the opposition. On October 30 the repeal bill passed the Senate by a vote of 43 to 32, 23 of the votes in favor of the measure being Republican.

The president, then, had won this memorable battle. So far, however, as concerned the administration's influence on legislation, it was a Cadmean victory. The vote of both houses on the repeal of the silver-purchase act marked the complete disintegration of the Democratic Party. For once the majority of conservative Republicans had been brought in line to carry through an administration measure. But in the nature of things this achievement was not likely to be repeated. Thenceforward the president and his cabinet had to face not only a Democratic Party honeycombed with bitterest hostility, but a Republican minority which was bound by precedent and principle to take a similar stand in opposition. The vote of Oct. 30, 1893, not eight months after inauguration day, was the last distinct legislative victory won by the administration.

ALEXANDER D. NOYES.

NEW YORK CITY.

[*To be continued.*]

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## TRADE COMBINATIONS AT COMMON LAW.

THE rule that all contracts in restraint of trade were void, was early established in the English law. The first case in which this principle was announced is said to have been decided in the reign of Henry V.[1] In this case an action for debt was brought on a bond, conditioned that the defendant should not use his art of a dyer's craft within a certain city for six months. Judge Hall declared the bond void, and expressed his indignation at this attempt to restrain trade, by exclaiming: "And, by God, if the plaintiff were here, he should go to prison till he paid a fine to the king." This refusal to recognize the validity of any contract in restraint of trade was for a long time characteristic of the English law; but gradually the rule was relaxed.

The modern application of this rule was very well expressed by Judge Christiancy in the case of Hubbard *vs.* Miller.[2] Dissenting from the doctrine sometimes laid down, that all contracts in restraint of trade are *prima facie* or presumptively void, he said:

> If, considered with reference to the situation, business and objects of the parties, and in the light of all the surrounding circumstances with reference to which the contract was made, the restraint contracted for appears to have been for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them, and not specially injurious to the public, the restraint will be held valid.[3]

Under this rule two interests are to be considered, those of the parties to the contract and those of the public. As to the former, the rule was laid down that no contract which did not benefit both parties to the contract, should be regarded as

[1] See Year Book, 2 Henry V, fol. 5, pl. 26. [2] 27 Mich. 15.

[3] This statement was really nothing but an elaboration of the rule which had long before been laid down in the English courts by Chief Justice Tindal, in the case of Horner *vs.* Neves, 7 Bing. 743.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reasonable; as to the latter, no contract in restraint of trade was to be regarded as lawful which was injurious to the public. As a matter of fact, most of the cases actually decided have turned exclusively on the interests of the parties, and the tendency of the courts has therefore been to relax very greatly the old rule of the common law. This tendency probably reached its culmination in a case decided in 1887, by the New York court of appeals, Diamond Match Co. *vs.* Roeber.[1] Here the court was called upon to construe a contract made by Roeber with the Swift, Courtney & Beecher Co., the grantor of the Diamond Match Co., in which he agreed that he would not within ninety-nine years, except in the capacity of agent or employee of the Swift, Courtney & Beecher Match Co., directly or indirectly engage in the manufacture or sale of friction matches in any part of the United States except Nevada and Montana. The court held the contract to be valid, although practically in general restraint of trade, saying:

> When the restraint is general, but at the same time is coextensive only with the interest to be protected and with the benefit meant to be conferred, there seems to be no good reason why as between the parties the contract is not as reasonable as when the interest is partial and there is a corresponding partial restraint.

But the court of appeals, in making this decision, did not intend to depart from the old rule, so far as the maintenance of that old rule was necessary for the protection of the interest of the public. It said distinctly:

> Covenants of the character of the one now in question operate simply to prevent the covenanter from engaging in the business which he sells, so as to protect the purchaser in the enjoyment of what he has purchased. To the extent that the contract prevents the vendor from carrying on the particular trade, it deprives the community of any benefit it might derive from his entering into competition; but the business is open to all others, and there is little danger that the public will suffer harm from lack of persons to engage in a profitable industry. Such contracts do not create monopolies; they confer no special or exclusive privilege. If con-

[1] 106 N. Y. 473.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tracts in general restraint of trade where the trade is general are void as tending to monopolies, contracts in partial restraint where the trade is local are subject to the same objection, because they deprive the local community of the services of the covenanter in the particular trade or calling, and prevent his becoming a competitor with the covenantee.

And again:

Combinations between producers to limit production and to enhance prices are or may be unlawful, but they stand on a different footing.

This case has frequently been cited, as indicative of a change in the rule of the common law, and as establishing the proposition that in our present economic conditions the policy of the law is, in order to promote the greatest freedom of contract, not to declare void contracts even in total restraint of trade. But the court of appeals based its decision upon the express ground that the public interest was not involved. While holding valid the particular contract before it, although in general restraint of trade, the court specifically declared that combinations to raise prices stood upon a different footing, and recognized the fact that where the public interest was involved, the rule might well be different. The common law has all along refused, and does now refuse, to recognize the validity of agreements made between individuals for the purpose of raising the prices of commodities, and has stamped any such attempt as a criminal conspiracy.

### 1. *Agreements aiming to raise prices are invalid.*

That such agreements are invalid has always been the rule of both courts of equity and courts of law. Thus, take the case of Craft *vs.* McConoughy.[1] This was a bill in equity brought for an accounting and distribution of the profits of an alleged partnership based upon a contract to the following effect: Several grain houses were put into the business upon a basis of distributing shares to the signers of the agreement;

[1] 79 Ill. 346, decided in 1875.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

each separate firm was to conduct its own business as if there were no partnership in existence. It was to be the duty of a general bookkeeper to make a record of all of the grain bought by each party, to debit him with the amount of money paid for the same, and to credit him with all sales; and at the end of every month each individual account was to be balanced, showing the profit or loss, which amount was to be divided *pro rata*, according to the number of shares held by each party. It was further agreed that prices were to be fixed from time to time, and each party to the agreement was to abide by them. Soon after the agreement was made, one party to it died, and his son demanded an accounting. The court held that the agreement was void, as contrary to public policy, and as being an attempt to foster a monopoly and to raise prices; and notwithstanding the fact that it had been partially executed, refused to require an accounting, saying: "The complainant and the defendants were equally involved in the unlawful combination; a court of equity will assist neither."

A similar and even stronger case, decided in Pennsylvania, is that of Nester *vs.* The Continental Brewing Co.[1] Here an association had been formed in Philadelphia among the brewers, for the purpose of controlling the sale and fixing the price of beer in Philadelphia and in Camden and Camden County, New Jersey. It was shown that the plaintiff had for valuable consideration obtained from a member of the association an assignment of a claim due such member from the association, without knowledge that the claim was based upon an agreement to monopolize the sale of beer. Notwithstanding his *bona fides*, the court refused to aid him, and denied his application for an accounting.

Not only courts of equity, but also courts of law, refuse to aid in the execution of such agreements. Thus, in the case of Chapin *vs.* Brown,[2] the grocers engaged in business in the town of Storm Lake agreed in favor of a third person to quit the business of buying butter for two years, and such

[1] 161 Pa. St. 473, decided in 1894.
[2] 83 Iowa, 156, decided in 1891.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

third person agreed to carry on that business exclusively for the same period of time. In pursuance of this agreement, the plaintiffs came to the town and engaged in the business of buying butter; at the commencement of the suit they were so engaged, and had made arrangements to continue the business for the period of two years. The defendant, however, continued in the business of buying butter; and it was alleged that by so doing he had damaged the plaintiffs to the extent of one hundred and fifty dollars, for which judgment was asked. The court refused the application of the plaintiffs, on the ground that the agreement was against public policy, as tending to monopolize the butter trade at Storm Lake, and to destroy competition in that business. This case is particularly interesting because the agreement was as to purchase and not as to sale. It therefore did not result in disadvantage to the consuming public generally, but only in disadvantage to the producers of butter.[1]

A somewhat similar case, More *vs.* Bennett, was decided in January, 1892, by the supreme court of Illinois.[2] Here the stenographers in the city of Chicago had formed an association, of which all the parties to the suit were members. The object of the association was to establish and maintain uniform rates. A schedule had been adopted, and it was alleged that the defendant, contrary to the rules of the association, had cut rates against the other members thereof, whereby the plaintiffs had been damaged. The court refused to pass upon the question whether a contract could be found in such articles of association, and decided that, even if a contract could be found, the agreement was void on account of its attempt to regulate prices. The court refused, therefore, to award damages to the plaintiff. The case is interesting as showing that the courts will apply the same rules to the attempt to regulate the price of labor as to the attempt to regulate the price of commodities.

[1] It is only fair to say that the contract was declared void, not only because it was contrary to public policy, but also because in the opinion of the court it was not based upon a consideration.

[2] 140 Ill. 69.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Another good case is that of the Texas Standard Oil Co. *vs.* Adoue, decided in Texas in 1892.[1] This suit was brought to recover guaranteed net prices for all the products of certain mills, and for the costs and expenses of production, in consideration of the strict performance of all covenants in a contract. This contract, it was held by the court, gave the defendant an almost unrestricted field to obtain the raw material for its mills, and the exclusive right to control, free from the competition of the plaintiffs and others, not only the sales and ruling prices of the product of its own mills, but also the entire yield of the mills of the other parties to the contract. The court held that the manifest purpose and natural tendency of this agreement were to prevent competition in too many localities — upon the one hand, to reduce the price of the raw materials; and upon the other, to enhance that of the manufactured product by artificial means, to the disadvantage and detriment of the public. Therefore the complaint was dismissed.[2]

A similar case is Arnott *vs.* The Pittston and Elmira Coal Co.[3] Here the plaintiff's assignor, the Butler Colliery Co., had made an agreement with the defendants that it would not send coal north to any point except to the defendants, the latter agreeing to take from the Butler Co. not exceeding 2000 tons of coal per month. In pursuance of this agreement, the Butler Colliery Co. shipped 2700 tons to The Pittston and Elmira Coal Co., and the plaintiff, to whom it had assigned its claim, brought suit for the price of the coal. The court held that the contract was made by the defendants with the purpose of establishing a monopoly of coal in the city of Elmira, that this purpose was known to the plaintiff's assignor, the Butler Coal Co., that the contract was contrary to public policy, and therefore that suit might not be brought upon it. The court said:

[1] 83 Tex. 650.

[2] This case, like Chapin *vs.* Brown, noticed above, shows that the courts will take notice that the effect of a combination in restraint of trade is to reduce the prices of articles to be purchased, as well as to increase the price of articles to be sold by the combination.

[3] 68 N. Y. 558, decided in 1877.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Every producer or vendor of coal or other commodity has the right to use all legitimate efforts to obtain the best price for the article in which he deals. But when he endeavors to artificially enhance prices by suppressing or keeping out of market the products of others, and to accomplish that purpose by means of contracts binding them to withhold their supplies, such arrangements are even more mischievous than combinations not to sell under an agreed price. Combinations of that character have been held to be against public policy and illegal. . . . The purpose of the vendee was against public policy, and the vendor knew it. This brings us straight to the question whether the vendor delivering goods under such a contract can recover for the price. I think that under the circumstances of the present case, as found by the referee, he cannot. . . . He had a right to dispose of his goods, and (under certain limitations) the vendor of goods may recover for their price, notwithstanding that he knows that the vendee intends an improper use of them, so long as he does nothing to aid in such improper use, or in the illegal plan of the purchaser. This doctrine is established by authority, and is sufficiently liberal to vendors. But — and this is a very important distinction — if the vendor does anything beyond making the sale to aid the illegal scheme of the vendee, he renders himself *particeps criminis* and cannot recover for the price.

So, also, it has been held that a loan made for the purpose of aiding in a combination to raise the price of a particular article, cannot be recovered. In the case of Raymond *v.* Leavitt,[1] plaintiff had loaned the sum of $10,000 to the defendant for the purpose of controlling the wheat market at Detroit, with a view of forcing up prices. The defendant, who was to give the plaintiff a third of the expected profits, was at all events to repay the $10,000, with or without profits. In rendering its decision, the court said:

The object of the arrangement between these parties was to force a fictitious and unnatural rise in the wheat market, for the express purpose of getting the advantage of dealers and purchasers whose necessities compelled them to buy, and necessarily to create a similar difficulty as to all persons who had to obtain or use that commodity, which is an article indispensable to every family in the country. . . . We shall decline enforcing such contracts. If parties

[1] 46 Mich. 447, decided in 1881.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

see fit to invest money in such ventures, they must get it back by some other than legal measures.

Probably the strongest case of all is that of Morris Run Coal Co. *vs.* Barclay Coal Co.[1] This was an action upon an accepted draft of the defendants in favor of the plaintiffs. The draft was made in execution of a contract between five coal companies for a sum found due in the equalization of prices under the contract. Provision was made in the contract for a committee of three to take charge of the business of all of these companies, to decide all questions and to appoint the general sales-agent. Provision was also made for the mining and delivery of coal, and for its sale through this agent, subject, however, to the restriction that each party should at its own cost deliver its proportion of the different kinds of coal in the different markets, at such times and to such parties as the committee should from time to time direct. The committee was authorized to adjust the price of coal in the different markets, and the rates of freight, and also to enter into such an agreement with the anthracite coal companies as should promote the interest of the parties. The companies were allowed to sell their coal themselves, but only to the extent of their proportion, and only at the prices adjusted by the committee. In answer to the claim that this agreement tended to establish a monopoly, the plaintiff replied that the true object of it was to lessen expenses, to improve the quality of the coal and to deliver it in the market in the best order to the consumer. These allegations the court said were immaterial:

> Admitting their correctness, it does not follow that these advantages redeem the contract from the obnoxious effects so strikingly presented by the referee. The important fact is that these companies control this immense coal-field; that it is the great source of supply of bituminous coal to the state of New York and large territories westward; that by this contract they control the price of coal in this extensive market, and make it bring sums it would not command if left to the natural laws of trade; that it concerns an

[1] 68 Pa. St. 173, decided in 1871.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

article of prime necessity for many uses; that its operation is general in this large region, and affects all who use coal as a fuel; and this is accomplished by a combination of all of the companies engaged in this branch of business in the large region where they operate. The combination is wide in scope, general in its influence and injurious in effects. These being its features, the contract is against public policy, illegal, and therefore void.

Further commenting upon the agreement, the court said:

The effects produced on the public interest lead to the consideration of another feature of great weight in determining the illegality of the contract, to wit: the combination resorted to by these five companies. Singly, each might have suspended deliveries and sales of coal to suit its own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed to every one in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others; but here is a combination of all the companies operating in the Blossburg and Barclay mining regions and controlling their entire productions. . . . This combination has a power in its confederative form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended, the demand for it becomes importunate, and prices must rise. Or if the supply goes forward, the price fixed by the confederates must accompany it. . . . Such a combination is more than a contract; it is an offense. . . . The present case is free of difficulty, the money represented by the bill arising directly upon the contract to be paid by one party to another party to the contract in execution of its terms. The bill itself is therefore tainted by the illegality, and no recovery can be had upon it.

While the courts will not enforce an unlawful agreement or give damages for the non-execution of an unlawful agreement, it does not by any means follow that they will prevent the execution of an agreement which is in reasonable restraint of trade. A good case upon this point is that of the Bohn Manufacturing Co. *vs.* Hollis.[1] The plaintiff was a manufac-

[1] 54 Minn. 223, decided in 1893.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

turer and vendor of lumber and other building material, a large and valuable part of his trade being with retail lumber dealers. The defendant, the Northwestern Lumbermen's Association, was a voluntary association of retail lumber dealers, formed to protect its members against sales by wholesale dealers and manufacturers to contractors and consumers. The method employed by the association was to demand of every wholesale dealer who sold directly to contractors and consumers ten per cent of the amount of such sales, and to notify all the retail dealers to refrain from dealing with such wholesale dealer until the payment was made. The plaintiff in this suit, having sold directly to consumers, was requested to pay the ten per cent to the association, failing which payment the secretary of the association threatened to send to the other retail dealers the notice provided for in the agreement of the association. Plaintiff demanded an injunction to restrain the issuing of these notices. The court refused the injunction; it held that the agreement was not in unreasonable restraint of trade or unlawful, and recognized that it was a general rule of trade in every department that wholesale dealers should refrain from selling at retail within the territory from which their customers obtain their business.

What one man may lawfully do singly [says the court], two or more may lawfully agree to do jointly; the number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful acts of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendant. If the act be unlawful, the combination of many to permit it may aggravate the injury, but cannot change the character of the act. In a few cases there may be some loose remarks apparently to the contrary, but they evidently have their origin in a confused and inaccurate idea of the law of criminal conspiracy, and in failing to distinguish between an unlawful act and a criminal one. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to conspire to commit an unlawful act which, if done by one individual alone, although unlawful, would not be criminal. Hence the fact that the defendants associated themselves to do the act complained of is wholly immaterial in this case.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A somewhat similar case is that of Cote *vs.* Murphy.[1] In this case, workmen engaged in building trades had combined to advance wages by reducing the hours of labor; and associations of employers in such trades had combined and agreed not to sell materials to contractors who acceded to the demands of the workmen, and to induce other dealers by all lawful means not to furnish such materials. The court held that such associations of employers were not liable in damages for conspiracy to contractors who, by reason of the combination, were not able to procure all the materials they could dispose of.

2. *Agreements aiming to raise prices are criminal.*

The early English and American cases, regarding labor as in the nature of a commodity, held very frequently that combinations among workingmen for the purpose of raising wages were, even if unaccompanied by any violence or other unlawful acts, criminal conspiracies. One of the earliest cases in this country was that of People *vs.* Fisher.[2] In this case, certain journeymen shoemakers had combined for the purpose of fixing the wages of members of the combination. They were indicted under a provision of the New York Revised Statutes which declared that if two or more persons should conspire to commit any act injurious to trade or commerce, they should be deemed guilty of a misdemeanor. This provision is regarded as declaratory of the common law. The court, in its opinion, declared that a combination to raise wages was injurious to trade or commerce, adding:

> It is important to the best interest of society that the price of labor be left to regulate itself, or rather be limited by the demand for it. Combinations and confederacies to enhance or reduce the prices of labor or of any articles of trade or commerce are injurious. They may be oppressive by compelling the public to give more for an article of necessity or of convenience than it is worth, or on the other hand, by compelling the labor of the mechanic for less than its value.

[1] 159 Pa. St. 420, decided in 1894.
[2] 14 Wendell, 9, decided in 1835.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It is only fair to say that the court was influenced in its decision by the fact that the indicted shoemakers left the employment of a master workman, in order to force him to discharge one who had formerly been a member of the shoemakers' association, but who had refused to pay the penalty fixed by the association for violation of the agreement not to work for less than a certain sum. It will be seen, therefore, that in this particular case the conspiracy included not only the combination to raise prices, but also something in the nature of a boycott. The court remarked:

> In the present case an industrious man was driven out of employment by the unlawful measures pursued by the defendants, and an injury done to the community by diminishing the quantity of productive labor and of internal trade. . . . He had a right to work for what he pleased. His employer had a right to employ him for such price as they could agree upon. The interference of the defendants was unlawful; its tendency is not only to individual oppression, but to public inconvenience and embarrassment. I am of the opinion that the offense is indictable.

In commenting upon this general subject of labor combinations, the supreme court of Pennsylvania, in the case of Cote *vs.* Murphy, already referred to, said:

> The fixed theory of courts and legislators . . . was that the price of everything ought to be, and in the absence of combinations, necessarily would be, regulated by supply and demand. The first to deny the justice of this theory and to break away from it was labor; and this was soon followed by . . . legislation . . . relieving workmen of the penalties of what for more than a century had been declared unlawful combinations or conspiracies.[1] Wages, it was argued, should be fixed by the fair proportion labor had contributed in production. The market price determined by supply and demand might or might not be fair wages, often was not, and, as long as workmen were not free by combinations to insist upon their right to fair wages, oppression by capital, or which is the same thing, by their employers,

[1] Thus, in New York it is provided that it shall not be a criminal conspiracy for persons to combine for the purpose of advancing or maintaining wages.—Laws of 1870, c. 19.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

followed. It is not our business to pass on the soundness of the theories which prompt the enactment of statutes. One thing, however, is clear: the moment the legislature relieved one and by far the larger number [*sic*] of the citizens of the commonwealth from the common-law prohibitions against combinations to raise the price of labor, and by a combination the price was raised, down went the foundation on which common-law conspiracy was based, as to that particular subject.

The logical consequence of this change in the law was, in the opinion of the court, that, after employees had combined to raise wages, any combination made by employers against raising wages was not an unlawful conspiracy, inasmuch as the purpose of the employers was, not to interfere with the price of labor as determined by the common-law theory, but to defend themselves against a demand made altogether regardless of the price as regulated by the supply.

A perusal of the later decisions upon this subject, sometimes made as a result of a change in the ideas of the judges, sometimes made as a result of specific statutes passed upon the subject, must lead to the conclusion that at the present time a combination of laborers for the purpose of raising wages, if unaccompanied by any unlawful act,—as, for example, a boycott or violence,—is not to be regarded as a criminal conspiracy. One of the latest cases upon the subject is The Longshore Printing Co. *vs.* Howell.[1] In this case the court held that it was not unlawful for a union to make provision in its by-laws for a scale of wages, or for limiting the number of apprentices; nor was it unlawful for several or many employees to agree among themselves to quit their employer, in order by so doing to induce him to confine his employment to certain kinds of labor.[2]

But while the law at the present time is that combinations of laborers to raise wages, when unaccompanied by any unlawful acts, are not criminal conspiracies, it cannot be said that the old common law generally has been thus changed. That is, not-

[1] 26 Oregon, 527, decided in 1894.

[2] The common law was the same in the case of a combination of employers to reduce wages. Such a combination was a criminal conspiracy. Com. *ex rel.* Chew *vs.* Carlisle, Brightley's Report, Pa., 36.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

withstanding the change made in favor of labor, it is still a crime to combine for the purpose of raising the price of commodities. One of the latest cases decided upon this point is People *vs.* Sheldon.[1] In this case, certain coal dealers in the city of Lockport entered into an agreement to organize a coal exchange. The object of this exchange was to secure a general supervision and protection of the interests of retail dealers in coal and similar commodities. It was made the duty of members strictly to obey all the provisions of the constitution, by-laws and resolutions of the exchange. Any member guilty of violating any provision of the by-laws, or of conduct unbecoming a member, or of giving short weight or overweight, was liable to forfeit his membership. The agreement further declared that the retail price of coal should as far as practicable be kept uniform; and that no price should be made at any time which should exceed a fair and reasonable advance over wholesale rates, or which should be higher than the current prices at Rochester or Buffalo, figured upon corresponding freight tariffs; and that at no time should the price of coal at retail exceed by more than one dollar the wholesale cost, except by the unanimous vote of all the members of the exchange. A certain member of the exchange was indicted, on the ground that this agreement constituted an unlawful conspiracy to increase the price of coal at retail in the city of Lockport, and that in pursuance of it the defendant and other members of the exchange elected officers and by resolution increased the price of coal seventy-five cents per ton. The indictment was found under section 168 of the Penal Code, which is a reënactment of the provision of the Revised Statutes, making it a misdemeanor for any two or more persons to conspire "to commit an act injurious to the public health, to public morals or to trade or commerce." The trial judge submitted the case to the jury upon the proposition that, if the defendants entered into the organization agreement for the purpose of controlling the price of coal and managing the business of the sale of coal so as to prevent competition in price between the members of the exchange, the

[1] 139 N. Y. 251, decided in 1893.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

agreement was illegal; and that if the jury found that this was their intent, and that the price of coal was raised in pursuance of the agreement to effect this object, the crime of conspiracy was established.

The court of appeals, in deciding upon the propriety of this charge, said :

> The question here does not, we think, turn on the point whether the agreement between the retail dealers in coal did, as a matter of fact, result in injury to the public, or to the community in Lockport. The question is: Was the agreement, in view of what might have been done under it, and the fact that it was an agreement the effect of which was to prevent competition among the coal dealers, one upon which the law affixes the brand of condemnation? It has hitherto been an accepted maxim in political economy that "competition is the life of trade." The courts have acted upon and adopted this maxim in passing upon the validity of agreements the design of which was to prevent competition in trade, and have held such agreements to be invalid. . . . The organization was a carefully devised scheme to prevent competition in the price of coal among the retail dealers; and the moral and material power of the combination afforded a reasonable guaranty that others would not engage in the business at Lockport except in conformity with the rules of the exchange. . . . The *gravamen* of the offense of conspiracy is the combination. Agreements to prevent competition in trade are in contemplation of law injurious to trade because they are liable to be injuriously used. . . . If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing. We are of opinion that the principle upon which the case was submitted to the jury is sanctioned by the decisions in this state, and that the jury were properly instructed that if the purpose of the agreement was to prevent competition in the price of coal between the retail dealers, it was illegal and justified the conviction of the defendant.

Finally, it has been held that corporations may be guilty of the crime of conspiracy, and that they are so guilty when they

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

refuse to sell their products to dealers handling the products of rival companies.[1]

3. *"Trust" agreements justify forfeiture of corporate charters.*

The impossibility, under the existing law, of making contracts in restraint of trade which would be enforced by the courts, and the danger that such agreements would be followed by punishment, led to the formation of agreements which took absolutely out of the power of the original owners of a business all control over it. These agreements, commonly known as trust agreements, provided for trustees who could operate a number of different enterprises in accordance with their own ideas of what was proper, and who could thus absolutely prevent competition between the parties to the agreements. Such an agreement usually, but not universally, provided for the formation of a corporation out of a partnership wherever a business had been conducted under the latter form. In organizing the trust the stockholders in these corporations exchanged their stock for trust certificates issued by trustees, elected by the persons in interest. The trustees, it was believed, would thus become the only stockholders known to the law, and would therefore have the power of controlling the operations of the corporations whose stockholders had become parties to the trust agreement. In other words, the attempt was made to prevent competition by means of a federation of corporations.

This method was very commonly employed in this country for almost a quarter of a century without being opposed by the public authorities. In 1888, however, attention was directed to a trust agreement in the state of New York, and the attorney-general decided to bring an action in the nature of a *quo warranto*

[1] People *vs.* Duke *et al.*, *N.Y. Law Journal*, Jan. 23, 1897. It would seem, however, that rebates given on condition that the person receiving the rebate shall deal exclusively with the person giving the rebate are perfectly legal. — Mogul Steamship Co. *vs.* McGregor, H. L. App. Cases, 1892, p. 25; Nat. Distilling Co. *vs.* Cream City Importing Co., 86 Wis. 352; Olmstead *vs.* Distilling and Cattle Feeding Co., 77 Fed. Rep. 265.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to forfeit the charter of a corporation whose stockholders had participated in its formation. The matter was decided in the case of the People *vs.* the North River Sugar Refining Co.,[1] and this decision was followed by the supreme court of Ohio in State *vs.* Standard Oil Co.[2] In the New York case the action of the stockholders, even without any formal action upon the part of the corporation, was held to be corporate action, and to be contrary to public policy; the charter of the corporation itself was therefore forfeited. Judge Finch, who delivered the opinion of the court, said :

I think there may be actual corporate conduct which is not formal corporate action ; and where that conduct is directed or produced by the whole body both of officers and stockholders, by every living instrumentality which can possess and wield the corporate franchise, that conduct is of a corporate character, and if illegal and injurious may deserve and receive the penalty of dissolution. . . . The directors of a corporation, its authorized and active agency, may see the stockholders perverting its normal purposes by handing it over bound and helpless to an irresponsible and foreign authority, and omit all action which they ought to take, offer no resistance, make no protest, but apparently acquiesce as directors in the wrong which as stockholders they have themselves helped to commit. That is corporate conduct, though there may be utter absence of directors' resolutions. . . . The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law, and the substantial inquiry always is : What, in a given case, has been that collective action and agency? As between the corporation and those with whom it deals, the manner of its exercise usually is material. But as between it and the state the substantial inquiry is only what that collective action and agency has done, and what it has in fact accomplished; what has seemed to be its effective work; what has been its conduct? It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thoughts, but to the corporators, the individuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hands

[1] 121 N. Y. 582, decided in 1890.
[2] 49 Ohio St. 137, decided in 1892.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs; the punishment is theirs; and both must attend and depend upon their conduct. And when they all act collectively as an aggregate body without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review and not be defeated by the assumed innocence of a convenient fiction.

In the Ohio case the reasoning on this head was very similar.[1] In both of these cases, however, the judges felt called upon to consider the further question whether the act which had thus taken the form of a corporate act was sufficiently injurious and contrary to public policy to justify the forfeiture of the charter. Here the decisions were somewhat divergent. In New York the court held that the act of which the corporation had been guilty was in excess of its powers, and that the charter, therefore, was forfeited. The combination of sugar refineries was declared to partake of the nature of a partnership of corporations, and hence to be in violation of law. There was in the opinion a *dictum* as to the injurious effects of monopolies upon the public; but the court in terms declined

[1] Judge Marshall said: "The general proposition that a corporation is to be regarded as a legal entity existing separate and apart from the natural persons composing it is not disputed. But that the statement is a mere fiction existing only in idea is well understood and not controverted by any one who pretends to accurate knowledge on the subject. . . . Now, so long as a proper use is made of the fiction that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored and the question determined whether the act in question, though done by shareholders, that is to say by the persons united in one body, was done simply as individuals and with respect to their individual interests as shareholders, or was done ostensibly as such but, as a matter of fact, to control the corporation and affect the transaction of its business in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so because, the stockholders having a dual capacity and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act cannot preclude judicial inquiry on the subject. If it were otherwise, then in one department of the law fraud would enjoy an immunity awarded to it in no other."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to advance into the wider discussion over monopolies and competition and restraint of trade, and the problems of political economy. . . . Without either approval or disapproval of the views expressed upon that branch of the case by the courts below, we are enabled to decide that in this state there can be no partnerships of separate and independent corporations, whether directly or indirectly, through the medium of the trust; no substantial consolidations which avoid and disregard the statutory permissions and restraints; but that manufacturing corporations must be and remain several, as they were created, or one under the statute.[1]

In the *dictum* with regard to monopolies there were several very interesting statements, indicative of the opinion of the court as to the public policy of permitting combinations whose purpose or effect is to promote monopolies. The public interest which corporate grants are always assumed to subserve is most unfavorably affected, said Judge Finch,

when beyond their own several aggregations of capital they compact them all into one combination which stands outside of the ward of the state, which dominates the range of an entire industry and puts upon the market a capital stock proudly defiant of actual values and capable of an unlimited expansion. It is not a sufficient answer to say that similar results may be lawfully accomplished; that an individual having the necessary wealth might have bought all of these refineries, manned them with his own chosen agents, and managed them as a group at his sovereign will; for it is one thing for the state to respect the rights of ownership and protect them out of regard to the business freedom of the citizen, and quite another thing to add to that possibility a further extension of those consequences by creating artificial persons to aid in producing such aggregations. The individuals are few who hold in possession such enormous wealth, and fewer still who peril it all in a manufacturing enterprise; but if corporations can combine and mass their forces in a solid trust or partnership with little added risk to the capital already embarked, without

[1] The statutes here referred to permitted the consolidation of manufacturing corporations, and the court in a previous part of the opinion seemed to intimate that a consolidation under the statute would have been perfectly proper, inasmuch as "the resultant combination would itself be a corporation deriving its existence from the state, owing duties and obligations to the state, and subject to the control and supervision of the state, and not [as in the case presented] an unincorporated board, a colossal and gigantic partnership, having no corporate functions and owing no corporate allegiance."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

limit to the magnitude of the aggregation, a tempting and easy road is open to enormous combinations vastly exceeding in number and in strength and in their power over industry any possibilities of individual ownership; and the state, by the creation of the artificial persons constituting the elements of the combination and failing to limit and restrain their powers, becomes itself the responsible creator, the voluntary cause of an aggregation of capital which it simply endures in the individual as the product of his free agency. What it may bear is one thing; what it should cause and create is quite another.

In the Ohio case the court declared the action of the corporations which formed the trust to be void, as contrary to public policy, on the ground that the attempt was made to form a monopoly. The judge said that the object of the agreement

was to establish a virtual monopoly of the business of producing petroleum and of manufacturing, refining and dealing in it and all its products throughout the entire country, and by which it might not merely control the production, but the price, at its pleasure. All such associations are contrary to the policy of our state and void. . . . Much has been said in favor of the object of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its products to the consumer. But such is not one of the usual or general results of a monopoly, and it is the policy of the law to regard not what may, but what usually happens. Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others. . . . Monopolies have always been regarded as contrary to the spirit and policy of the law. The objections are stated in "The Case on Monopolies," Darcy *vs.* Allein, Coke, pt. XI, 84 b. They are these: (1) "That the price of the same commodity will be raised, for he who has the sole selling of any commodity may well make the price as he pleases"; (2) "The incident to a monopoly is that after the monopoly is granted, the commodity is not so good and merchantable as it was before, for the patentee, having the sole trade, regards only his private benefit and not the commonwealth"; (3) "It tends to the impoverishment of divers artificers and others who before, by the labor of their hands in their art or trade, had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary." The third objection, though frequently overlooked, is none the less important. A society in which a few men are the employers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and a great body are merely employees or servants is not the most desirable in a republic; and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits, or in the profits of production, as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. It is true that in the case just cited the monopoly had been created by letters patent; but the objections lie not to the manner in which the monopoly is created. The effect on industrial liberty and the price of commodities will be the same, whether created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the invariable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the combination or trust.[1]

### 4. *Are corporations for purposes of monopoly illegal?*

The effect of the foregoing and similar decisions was that any persons who intended to form a combination for the purpose of limiting competition, were obliged to seek a substitute for the trust agreement. As a general thing they effected an organization in the shape of a large corporation, since, as has been shown, the New York court of appeals had appeared to regard this as a legal method of forming a combination.[2] The courts were soon required to decide upon the legality of such action. The first case that came up was that of People *vs.* The Chicago Gas Trust Co.[3] A gas trust company, as it was called, had been formed, in whose certificate of incorporation the purposes of the corporation were stated to be the manufacture of gas and the purchase, holding and selling of stocks in other gas and electric companies in Chicago or elsewhere in Illinois. *Quo warranto*

[1] A similar decision was made by the supreme court of Nebraska in State *vs.* Nebraska Distilling Co., 29 Neb. 700, decided in 1890. See also Mallory *vs.* Hananer Oil Works, 8 S. W. Rep. (Tenn., 1888), where suit was brought against trustees of a trust agreement by a corporation which was a party to such agreement to recover possession of its property. Judgment was given in favor of the plaintiff on the ground that the corporation could not enter into such an agreement, which the court considered to be a partnership of corporations.

[2] *Ante*, p. 230.

[3] 130 Ill. 268, decided in 1889.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

was brought against the corporation to obtain judgment of ouster against its use of the franchise to purchase and hold or sell the capital stock of other companies. It was clearly admitted on both sides that the court was not precluded from examining into the legality of the exercise of this franchise by the fact that the certificate of incorporation had been approved and filed with the proper executive officers of the state. The general incorporation act of the state permitted the formation of corporations in the manner provided by it for any lawful purpose. The question which arose was, therefore, whether the corporation in question had been formed for a lawful purpose.

In answering this question the court found that one result of the exercise of this franchise by the Chicago Gas Trust Company would be that it could control the four other companies in Chicago. The control of these four companies, it was thought, would suppress competition among them, and thus build up a virtual monopoly in the manufacture and sale of gas. The court said:

> Whatever tends to prevent competition between those engaged in a public employment or business impressed with a public character is opposed to public policy, and therefore unlawful. Whatever tends to create a monopoly is unlawful, as being contrary to public policy.

It therefore held that

> if contracts and grants whose tendency is to create monopolies are void at common law, then where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void.

Further on in the opinion it is stated:

> To create one corporation for the express purpose of enabling it to control all the corporations engaged in a certain kind of business, and particularly a business of a public character, is not only opposed to the public policy of the state, but is in contravention of the spirit, if not the letter, of the constitution.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The court also cited with approval the following views expressed by the supreme court of Georgia in the case of Central Railroad Co. *vs.* Collins.[1]

> All experience has shown that large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. Having perpetual succession, any kind of a corporation has peculiar facilities for such accumulations, and most governments have found it necessary to exercise great caution in their grants of corporate powers. Even religious corporations professing, and in the main truly, nothing but the general good, have proven obnoxious to this objection, so that in England it was long ago found necessary to restrict them in their powers of acquiring real estate. Freed as such bodies are from the sure bound to the schemes of individuals, the grave, they are able to add field to field and power to power until they become entirely too strong for that society which is made up of those whose plans are limited by a single life.

For these reasons judgment of ouster was issued against the Chicago Gas Trust Company, as to the exercise of the franchise of purchasing the stocks in other gas companies.

All the cases thus far considered certainly give evidence that the courts of this country regard any combination, whatever form it may take, whose tendency or whose purpose is to form a monopoly, as contrary to public policy and illegal at common law; but none of them, not even the last, distinctly declares unlawful the formation of a corporation whose purpose or whose effect is to promote monopoly. This question it remained for the supreme court of Illinois to consider in the case of the Distilling & Cattle Feeding Co. *vs.* The People.[2]

In view of the decisions which the courts were almost universally rendering as to the illegality of trust agreements, the holders of trust certificates in the Distillers & Cattle Feeders' Trust, commonly called The Whiskey Trust, had in February, 1890, adopted a recommendation of the trustees to form a corporation with a capital stock of $35,000,000. The corporation was thereafter organized. The trustees of the

[1] 40 Ga. 582, decided in 1869.
[2] 156 Ill. 448, decided in 1895.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

former trust subscribed for all the stock of the new corporation and elected themselves its first directors. They, or so many of them as were necessary to constitute a majority of the directors of each of the corporations composing the trust, also ordered a conveyance of all the property which those corporations held, to the newly formed corporation; and as directors of these corporations, they executed to the Distilling & Cattle Feeding Company a transfer of all of the property of these corporations, and surrendered to the holders of the trust certificates the shares of stock in the newly formed corporation in return for the trust certificates. The new corporation subsequently purchased the property and business of other corporations not parties to the former trust agreement. Suit was brought against the new corporation, and judgment of ouster from its franchise was demanded, on the ground that it had created a monopoly in the manufacture and output of distillery products, and secured such control over the consumers thereof as to destroy all competition in the manufacture and sale of such products throughout the United States.

The court, in rendering its opinion, said:

> There can be no doubt, we think, that the Distillers' & Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. [The new corporation succeeded] to the trust, and its operations are to be carried on in the same way, for the same purposes and by the same agencies as before. The trust then being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country — over production and prices — and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the method and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In answer to the objection that the defendant corporation by its charter was authorized to purchase and own distillery property, and that there was no limit placed upon the amount of property which it might thus acquire, the court said:

It should be remembered that grants of powers in corporate charters are to be construed strictly, and that what is not clearly given is by implication denied. The defendant is authorized to own such property as is necessary to carry on its distillery business, and no more. Its power to acquire and hold property is limited to that purpose, and it has no power by its charter to enter upon a scheme of getting into its hands and under its control all, or substantially all, the distillery plants and the distillery business of the country, for the purpose of controlling production and prices, of crushing out competition, and of establishing a virtual monopoly in that business. All such purposes are foreign to the powers granted by the charter. Acquisitions of property to such extent and for such purpose do not come within the authority to own the property necessary for the purpose of carrying on a general distillery business. In acquiring distillery properties in the manner and for the purposes shown by the information, the defendant has not only misused and abused the powers granted by its charter, but has usurped and exercised powers not conferred by, but which are wholly foreign to, that instrument. It has thus rendered itself liable to prosecution by the state by *quo warranto*. We are of the opinion that upon the facts shown by the information, the judgment of ouster is clearly warranted.

A case involving somewhat similar questions is that of The People *vs.* The Milk Exchange, decided by the New York court of appeals.[1] The Milk Exchange had ninety-odd stockholders, a large majority of whom were milk dealers in the city of New York, or creamery or milk-commission men doing business in that vicinity. At the first meeting of the exchange after its incorporation, the following among other by-laws was adopted: "The board of directors shall have the power to make and fix the standard or market price at which milk shall be purchased by the stockholders of this company." Acting upon this by-law, the board of directors from time to time fixed the price of milk to be paid by dealers, and the prices so fixed largely controlled the market in and about the city of New York.

[1] 145 N. Y. 267, decided in 1895.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The court, in deciding the case, declared its conviction that there was a combination on the part of milk dealers and creamery men in and about the city of New York to fix and control the price that they should pay for milk; and that a case was presented in which the jury might have found that the combination referred to was inimical to trade and commerce, and therefore unlawful. Accordingly, the charter was declared forfeited.

> It may be claimed [the court said] that the purpose of the combination was to reduce the price of milk and, it being an article of food, such reduction was not against public policy. But the price was fixed for the benefit of the dealers, and not the consumers, and the logical effect upon the trade of so fixing the price by the combination was to paralyze the production and limit the supply, and thus leave the dealers in a position to control the market, and at their option to enhance the price to be paid by the consumers.

This case is interesting as showing that the courts will take cognizance of an attempt through a combination in the form of a corporation to lower the price of commodities to the detriment of the producer as well as of an attempt to enhance the price at the expense of the consumer.

### 5. *Attitude of the United States Supreme Court.*

Notwithstanding the decisions thus far considered, persons who desired to form a trade combination were able to do so with impunity, on account of the fact that if their organization was declared illegal in one state, they could organize under the laws of another, provided the public opinion in the latter was not opposed to trade combinations. An attempt was therefore made in what is known as the Anti-Trust Law, passed by Congress in 1890, to give the national government the power, in addition to that which the states already possessed, to suppress trade combinations. But it was recognized by the promoters of this bill that Congress had no jurisdiction of specifically state industry and commerce. The act was, therefore, worded as follows: "Every contract, combination in the form of trust

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal." Every one participating in such a contract or engaging in such a combination was declared to be guilty of a misdemeanor, and made liable to severe punishment. It was provided that the circuit courts of the United States should have jurisdiction to restrain violations of the act, and that it should be the duty of the law officers of the United States to institute the proper proceedings. A suit was begun in Pennsylvania against certain sugar-refining corporations which had been absorbed by the American Sugar Refining Company. Evidence was taken before Judge Butler, of the circuit court, who said in his opinion: "The object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country." The opinion also showed that, after the purchase of these refineries by the American Sugar Refining Company, the latter corporation had obtained control of all refineries in the United States except one in Boston, whose output was about two per cent of the sugar refined in this country.

This case went on appeal to the supreme court of the United States.[1] Here, on the state of facts presented by Judge Butler, the court held that the act of 1890 was framed in the light of well-settled principles; that

> Congress did not attempt thereby to assert the power to deal with monopoly directly as such, or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control or disposition of property, or to regulate or prescribe the price or prices at which such property or the products thereof should be sold, or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted. . . . The contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar-refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations. . . . It is true that the bill alleged that the products of these refineries were sold and distributed among the several states,

[1] United States *vs.* E. C. Knight Co., 156 U. S. 1.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and that all the companies were engaged in trade or commerce with the several states and with foreign nations. But this was no more than to say that trade and commerce served manufacture to fulfill its functions. . . . It does not follow that an attempt to monopolize or the actual monopoly of the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though in order to dispose of the product the instrumentality of commerce was necessarily invoked. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce; and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle the claimants to a decree. The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo* before the transfers; yet the act of Congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce.

It will be noticed that this decision was based upon three grounds: (1) that the proper remedy was not invoked, or at any rate was not invoked at the proper time; (2) that the combination did not disclose an attempt to monopolize; (3) that, even if it did so, it was not a combination in restraint of interstate or foreign commerce.

As to the first of these grounds, it may be said that the bill which was before the court asked that an injunction might issue to prevent and restrain the said defendants from further and continued violations of the act of Congress. This was in addition to the demand that the agreements between the defendants be cancelled and that the shares of stock transferred in performance of the contracts be restored to their original owners.[1]

[1] Judge Harlan, in his dissenting opinion, said on this point: "While a decree annulling the contracts under which the combination in question was formed may not in view of the facts disclosed be effectual to accomplish the object of the act of 1890, I perceive no difficulty in the way of the court passing a decree declaring that that combination imposes an unlawful restraint upon trade and commerce among the states and perpetually enjoining it from further prosecuting any business pursuant to the unlawful agreements under which it was formed or by which it was created."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

As to the second ground of the decision, the trial judge found, as has been stated, that the object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country. Moreover, the state courts, in the decisions heretofore cited, have declared that they will go back of any alleged purpose of an agreement or of a certificate of incorporation and will inquire what is its real purpose and effect; and that if the latter are to establish a monopoly unreasonably limiting competition, they will declare the agreement void.

But while these first two considerations undoubtedly influenced the supreme court somewhat, the main ground upon which the decision was based was that the manufacture and sale of sugar were not interstate or foreign commerce. In order to reach this decision, the court laid little stress upon the purpose to monopolize the sale. The sale of sugar was declared to be merely an incident to the manufacture. As the court said, "trade and commerce serve manufacture to fulfill its functions." Laying the weight which they did upon the manufacture, they considered that they were bound by the case of Kidd *vs.* Pearson.[1] Here the

question was discussed whether the right of a state to enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, could be overthrown by the fact that the manufacturer intended to export the liquors when made; and it was held that the intent of the manufacturer did not determine the time when the article or product passed from the control of the state and belonged to commerce, and that therefore the prohibitory act was not in conflict with the constitutional provision giving the right to regulate interstate commerce to Congress.

Another case which seems to have influenced the court was that of Coe *vs.* Erroll.[2] Here the question was "whether certain logs cut at a place in New Hampshire and hauled to a river town for the purpose of transportation to the state of Maine were liable to be taxed like other property in the state of New Hampshire"; and it was held that they were liable to

[1] 128 U. S. 1. [2] 116 U. S. 517.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

taxation just as much as any other property in the state, and that the owner's intention and his partial preparation to ship them out of the state would not exempt them from taxation as articles of interstate commerce.

Judge Harlan, in a dissenting opinion, pointed out, however, that, under previous decisions of the supreme court, interstate commerce embraced something more than the mere physical transportation of articles of property and the vehicles or vessels by which such transportation was effected. He referred in particular to the case of Mobile County *vs.* Kimball,[1] where it was said that commerce with foreign countries and among the states, strictly considered, consists "in intercourse and traffic, including in these terms navigation and transportation and transit of persons or property, as well as the *purchase, sale and exchange* of commodities." Judge Harlan did not consider that these early statements and decisions had been modified by either of the cases referred to in the majority's opinion. As regards the question of monopoly, he said:

> A combination such as that organized under the name of the American Sugar Refining Company has been uniformly held by the courts of the states to be against public policy and illegal because of its necessary tendency to impose improper restraints upon trade.

And further:

> The object of this combination was to obtain control of the business of making and selling refined sugar throughout the entire country. Those interested in its operations will be satisfied with nothing less than to have the whole population of America pay tribute to them. That object is disclosed upon the very face of the transactions described in the bill, and it is proved — indeed conceded — that that object has been accomplished to the extent that the American Sugar Refining Company now controls 98 per cent of all the sugar-refining business in the country, and therefore controls the price of that article everywhere. Now, the mere existence of a combination having such an object and possessing such extraordinary power is itself under settled principles of law — there being no adjudged case to the contrary in this country — a direct restraint of trade in the

[1] 102 U. S. 691.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

article for the control of the sales of which in this country that combination was organized. And that restraint is felt in all the states for the reason known to all, that the article in question goes, was intended to go and must always go into commerce among the several states and into the homes of people in every condition of life.

Finally, Judge Harlan argued for the public policy of the Anti-Trust Law in the following language:

> We have before us the case of a combination which absolutely controls, or may at its discretion control, the price of all refined sugar in this country. Suppose another combination organized for private gain and to control prices should obtain possession of all the large flour mills in the United States; another of all the grain elevators; another of all the oil territory; another of all the salt-producing regions; another of all the cotton-mills; and another of all the great establishments for slaughtering animals and the preparation of meats. What power is competent to protect the people of the United States against such dangers except a national power — one that is capable of exerting its sovereign authority throughout every part of the territory and over all the people of the nation?

The decision of the United States supreme court, holding that the manufacture and sale of commodities were not, as not being objects of interstate commerce, subject to the regulation of Congress, was therefore not reached without protest; but the court was so nearly unanimous in its decision as to justify the belief that the decision itself will not be reversed in the immediate future.[1] The experiences of the states and the arguments advanced by Judge Harlan in his dissenting opinion would lead also to the belief that the regulation of these trade combinations by the states is practically impossible. Any attempt at efficient regulation must come from the national government.

In view of the fact that great insistence was laid in the last presidential campaign upon the necessity of some efficient regulation of combinations in restraint of trade, it may be well to summarize the views that the courts have expressed as to the

[1] The opinion of the majority in the recent case of the Trans-Missouri Freight Association seems, however, to render the future tendency somewhat uncertain.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

impolicy of permitting these combinations to exist and of recognizing or enforcing in any way contracts for executing their purposes.

The reasons given by the courts for their attitude may be classified under three heads — economic, social and political. The economic reasons are two in number. In the first place, it is believed by the courts that a combination in restraint of trade and tending to promote a monopoly will result either in the sale of a depreciated article to the public, or in an enhancement of the price of the article which is so controlled. This was the important economic reason at the basis of the decision in the time of Queen Elizabeth, relative to monopolies granted by the crown. This reason has had so much weight with the courts that they have refused to investigate the question whether such has been the effect of a combination. They have simply declared that the possession of monopoly powers by any combination must inevitably result in an enhancement of price or in a depreciation in the quality of the article sold. Their reasoning here, it will be noticed, is distinctly *a priori;* and so long as they adhere to this principle, it will be impossible to prove by reference to actual facts whether it is based upon the truth or not. The second economic argument advanced by the courts in support of their policy is that the fixing by any combination of the price of raw materials injures the producer of the raw material, and will ultimately result in disadvantage to the consumer.

The social argument against combinations also dates from the time of Elizabeth. A monopoly, the court said,

> tends to the impoverishment of divers artificers and others who before by the labor of their hands in their art or trade have maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary.

In the form in which it is put, this argument would seem to rest on a misapprehension of the conditions caused by monopolies; and if applied in as broad a way as it is stated in this case, it would be available against the introduction of all labor-saving machinery. In the Ohio case of the State *vs.* The Standard Oil

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Co., already referred to, this argument was somewhat modified. The court took the ground, not so much that the formation of the combination throws great numbers of individuals out of employment, as that the development of monopolies transforms great numbers of persons formerly independent into employees or servants. This argument, though treated by the Ohio court as a development of the view of the English court in the case of monopolies, is really quite different in character. A further argument of a social character is to be found in the opinion of Judge Finch in the Sugar Trust case. He based the right of the state to limit the activity of corporations, as distinct from that of individuals, on the ground that a direct grant of corporate powers would, if these powers were not limited, aid in the aggregation of wealth in a few hands. He did not desire to limit the right of individual action, but merely claimed that when specific powers which can only exist as a result of the grant of the state are exercised by individuals, they become rightly subject to regulation in the interest of the state as a whole. It is one thing, said he, for the state to respect the rights of ownership and protect them out of regard to the business freedom of the citizen; but it is quite another thing for the state positively to promote the aggregation of capital by creating artificial persons such as corporations, without limiting their powers.

The political reason advanced by the courts for their position with regard to trade combinations is perhaps as well stated as anywhere by the supreme court of Georgia. Here it is pointed out that all large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. In England it was found necessary to limit the amount of property which even religious corporations might possess, notwithstanding the fact that they, far more than trading bodies, might be expected to exercise their powers for the general good. Given the privilege of legal immortality, corporations, it was held, are apt to "become entirely too strong for that society which is made up of those whose plans are limited by a single life."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Such are the rules of law in the United States with regard to the legality of trade combinations, and such are the reasons which the courts have advanced for the adoption of these rules. If these reasons are not sound, if the conditions of society are not what they were when these rules were adopted and these reasons were first advanced, it would be well that the rules of law be changed. Changes may be made by legislation, as has very generally been done in the case of labor combinations. If, on the other hand, these reasons are now sound and the rules of law based thereon are at the present time in accordance with public policy, some method ought to be provided for their efficient enforcement. This, it has been pointed out, can in the cases of the largest combinations now in existence be done only through the modification of the present rule of the United States supreme court with regard to national regulation of monopolies; or, in case the supreme court shall not see fit to modify its rules, by the adoption of a constitutional provision giving the Congress of the United States the necessary powers.

FRANK J. GOODNOW.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## THE WIRE-NAIL ASSOCIATION OF 1895–96.

SO lately as 1888 *The American Architect* began an article on nails in this way: "The nails commonly used in connection with building operations are too well known to require any description. They are specifically designated as plate nails."[1] That year, 1888, was almost the first in which plate or cut nails felt a real competition from wire nails. In that year the latter formed less than a fifth of the total product;[2] in 1895 they constituted nearly three-fourths. The idea of making nails of wire did not arise in America; in fact, our people were even somewhat slow to adopt it. The first wire nails — headed by hand and ground to a point — appear to have been made in France early in this century.[3] Mr. M. Baackes, an old wire-nail manufacturer of Cleveland, says that the first machine for forming the heads was made in France about 1850.[4] According to Mr. John Hassall, who is still engaged in making wire-nail machinery in New York city, his father was active in making and running the first wire-nail machines used in this country, early in the fifties.[5] The business seems to have extended itself only modestly, for Mr. Baackes regards the factory which he helped to start at Covington, Ky., in 1875, as "the first mill for the manufacture of wire nails on this side of the Atlantic."[6] The production rose from 20,000 kegs in 1880, according to Mr. Baackes's estimate, to 125,000 in 1887; and the average price fell from $20.00 per keg in 1875 and $10.00 in 1880 to $4.81 in 1887. At the end of 1887 a manufacturer wrote: "Wire nails are now quoted at less than actual cost, as results will in time demonstrate."[7] About the same

[1] *American Architect*, Aug. 18, 1888, p. 73.
[2] Report of American Iron and Steel Association, 1889, p. 45.
[3] M. Baackes, in *Iron Age*, Jan. 2, 1896, p. 106.
[4] *Ibid.*
[5] *Iron Age*, April 23, 1896, p. 997.
[6] M. Baackes, in *Iron Age*, Jan. 2, 1896, p. 106.
[7] *Iron Age*, Jan. 5, 1888, p. 22.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

time *The Iron Age*, the leading paper of the hardware trade, said editorially: "It is evident that the business is now greatly overdone."[1] The production increased, however, to more than 300,000 kegs in 1890, and to nearly 600,000 kegs in 1895; and the average price fell to $2.85 in 1890, according to the estimate of Mr. Baackes, and to $1.60 in 1894. At present, April 1, 1897, it is about $1.50. These facts show how recently and how rapidly the business has attained importance, and how fast the price of wire nails has fallen.

The profits of the early wire-nail men, as first comers in the field, were doubtless good; but the cost of production at that time must not be gauged by the later selling prices. At the outset their machinery was imperfect. Then, the first nails were of small sizes, for special purposes, such as use in cigar boxes, furniture, mouldings and wagons; and small nails are relatively costly. It was not till 1886 that a list of regular or "penny" nails was published, and a serious effort was made to compete with cut nails in the general market. The wire of the first makers, too, was all of Norway iron; for they could not get any other material on which they could form a head that would not break off in driving. The H. P. Nail Co., established in 1879, is said to have been the first to succeed in using Bessemer steel wire. Finally, the price of Bessemer steel itself was at first much higher than now. Although quotations on steel billets earlier than 1887 are not available, their fall in price may be gauged by that of steel rails, which dropped from an average of $48.25 per ton in 1879 and $67.50 in 1880 to $37.08 in 1887. Billets were $32.55 on the average in 1887 and $16.58 in 1894,[2] while they are now quoted at about $15.00. It was the removal of these early limitations that made possible the great expansion of the industry.

As the business is now carried on, regular nails are sold with reference to a "base price" and a uniform schedule, or "card," of "extras." Excepting under the card made in 1895, the base has always been the same as the price of the largest nails. It

[1] *Iron Age*, Jan. 5, 1888, p. 22.

[2] Report of American Iron and Steel Association, 1896, p. 26.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is the base only that is named in market reports and in quotations. The extras, which are added to the base to determine the prices of the smaller sizes, are fixed by agreement of the manufacturers, and are likely to remain unchanged for several years together. From April 11, 1892, to July 19, 1895, the card was as follows:

| | |
|---|---|
| 60-d. | base (no extra) |
| 50-d. | $.10 extra |
| 30-d. and 40-d. | .25 " |
| 20-d. | .35 " |
| 12-d. " 16-d. | .45 " |
| 10-d. | .50 " |
| 8-d. " 9-d. | .60 " |
| 6-d. " 7-d. | .75 " |
| 4-d. " 5-d. | .90 " |
| 3-d. | 1.20 " |
| 2-d. | 1.60 " |

When 60-d. nails were quoted at $.85, put up in a keg which I am assured by a manufacturer cost at least $.09, the wire from which they were made was quoted at $1.15. Every nail-maker who bought his wire in the market lost the whole cost of handling and manufacture, and nearly four-tenths of a cent besides, on every pound of 60-d. nails he sold. The explanation of his apparent willingness to sell below cost is found in the character of the list of extras, and in the manner in which all orders were required to be assorted. The extras on all the smaller nails were far greater than the differences in cost between them and the largest. Indeed, the wire for a keg of 12-d. nails cost no more than that for a keg of 60-d. No manufacturer would sell 60-d. alone at the market price. All orders had to be so assorted that the average of the extras on the whole should be at least $.60 per keg: that is, if a dealer gave an order for a hundred kegs, at a base price of $.85, he had to make it up in such a way that the average price of the whole, by the schedule, would be not less than $1.45. So the loss on the larger and cheaper sizes was covered by the gain on the smaller and dearer. Some small manufacturers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

took advantage of this artificial adjustment of prices, by making only the smaller sizes, and leaving the losing end of the schedule to the great establishments.

### 1. *History of the Association.*

Iron and steel products have been particularly fruitful of combinations; but before 1895 circumstances had not been favorable to bringing wire nails into the list. The manufacturers had been fairly contented, making the comfortable profits of a new and rapidly growing business. It is probable that combinations are not easily formed in any industry so long as the average man of those concerned, with average advantages, can make such a profit as the general opinion of business men pronounces fair; and that consolidation generally results from a strong sense of pressure. In this business, by the beginning of 1895, the necessary pressure had developed. The manufacturers cried out with one voice that they were ruined by competition. It must be noted, however, that most men do not consider it good policy, under any circumstances, to magnify their profits before the world; that men who have been accustomed to large profits do really imagine themselves ruined when they are reduced to not much more than ordinary interest on their capital; and that lugubrious statements, made in general terms and without figures, ought not to be taken without salt. The bulk of the wire-nail business was in the hands of six or eight great companies, which had their own wire mills and rod mills, and put the material through all the processes from the form of the steel billet. So long as smaller concerns, buying their wire in the market, continued to do business, it strains credulity somewhat to believe that the great establishments did not make moderate profits. The curious arrangement of the schedule of extras does seem to have given a certain opportunity to small makers; but the matter was in the hands of the great companies, and they would have changed the schedule if they had found it to work strongly against them. The strict requirement of assorted orders made it impossible for any maker of small nails only to do more than

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a very restricted business. If any dealer bought many nails of such a maker, he could not buy his large nails at the market price.

The days of good profit to the average man with average advantages were, however, gone by; and the manufacturers — large and small alike — were in a state of mind to yield themselves plastic to the hand that could organize the machinery for increasing profits. This hand belonged to Mr. John H. Parks of Boston, who had been a member of the old firm of Loring & Parks, long well known as manufacturers of tacks. That firm combined with their principal competitors, some six years ago, in forming the Atlas Tack Corporation, which is still the giant of the tack trade; though the leading men connected with it have thought it well during the last few months to put it through a receivership and a reorganization, with the usual absorption of the interests of the smaller investors. For several years past, Mr. Parks has confined his personal attention to the promotion of combinations in various lines of hardware. Bolts and shovels, as well as tacks and nails, have known his supple hand. From a time early in the spring of 1895, he seems to have been busy in working up an agreement among the manufacturers of nails. The approaching consummation of this enterprise was announced on May 2, through *The Iron Age*, in the following words:

> With a view to securing a better condition of things and correcting influences which hitherto have tended toward irregularity in prices and the unsettling of the market, the manufacturers have been conferring with a view to concerted action in this direction.

The combination began its activity with the customary declaration as to its moderate purposes with respect to price. In the article from which I have quoted, this vital matter is thus dealt with: "The manufacturers directly concerned in the movement disclaim any intention of advancing prices unreasonably, their purpose being to market their goods at a reasonable profit."

The first effect of the rise of the combination was a press of orders. Many jobbers bought all the nails that they expected

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to need for six months or more. From about May 1 the manufacturers refused to accept any orders for shipment later than May 30. By May 15 the base price had risen to $.95; and by the 20th it had become so difficult to place large orders that there was no quotable price. Some sales were, however, reported about this time at $1.15 to $1.20. The combination was formally completed in the last week of May, and the base price for June was fixed at $1.20, for car lots, f. o. b. Pittsburg. All nails, no matter from what mill, were to be sold, freight paid, on the basis of the Pittsburg price, plus the rate of freight from Pittsburg to the point of destination. For instance, a customer at Anderson, Ind., would have to pay a base price, consisting of $1.20 plus the rate of freight from Pittsburg to Anderson, whether he bought in Pittsburg, or in Cleveland, or from the mill in his own town. Jobbers were allowed a discount of five cents per keg on purchases of a thousand kegs from one mill within one calendar month; and the minimum was soon reduced to five hundred kegs. In addition, a rebate of ten cents per keg, payable after six months, was offered to jobbers who should neither buy any nails from outside makers nor sell below the association price.

The form of the association was that of a simple pool. Prices and output were always fixed for a month in advance. The agreed production was apportioned to the companies on a basis depending partly on sales for three months before the pool was formed, partly on production in one of those three months, and partly on capacity as indicated by the number of machines. Any mill could sell its privilege of production, or any part of it; but every mill was rigidly restricted to its allotment during each calendar month, unless it bought the allotment of another. A cost price was assumed, which was supposed to represent the cost of production at Pittsburg; and the cost at every other point was assumed to be equivalent to the Pittsburg cost with freight from Pittsburg added. This was because the raw material comes chiefly from the Pittsburg region. So the selling price, including delivery at the buyer's railroad station, and the assumed cost price were harmonized by the use of the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Pittsburg base. All the profits, above the cost prices so arrived at, were paid into the pool; and the amount in the pool, after paying all expenses, was divided monthly. The basis of division was the same as the basis for the allotment of production.

An inspector, hired by the association, was placed at each association mill, with the most sweeping powers of investigation. Every part of the mill, every book, every letter written or received, was open to him. So far as possible, outside owners of nail machines were hired to keep them idle, and makers of machines were hired to refuse orders for them from persons outside the association. For a year it was very difficult to buy a machine, and while the association lasted it was never easy. A company which went into the business in the autumn of 1896 writes:

> We found the market in which we could buy machines was very limited, most of the machine manufacturers having entered into an arrangement with the combination to stop making them for outside parties. We were unable to obtain what we wanted, and consequently our production of nails was much below what we intended it to be when we started.

With a similar combination of Canadian nail manufacturers, the association made an agreement by which each bound itself not to offer goods in the territory of the other. Efforts were also made to induce the European manufacturers to agree to let none of their nails come to America. Although it is said that they did not meet with much success, only one large lot of nails and a few small lots were actually imported during the existence of the pool.

The agreement of the wire-nail men was accompanied by a similar agreement of the cut-nail men. Although separate in form, these two organizations acted as one. The price of cut nails was accordingly advanced with that of wire nails, at first 20 cents below, and afterwards uniformly 25 cents below — a difference not relatively greater than that which had existed before the pool was formed. Wire nails were so far preferred that, in spite of the difference in price, their competition had reduced the trade in cut nails to a fraction of its former size.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and had thrown hundreds of cut-nail machines out of use. The existence of these machines was one of the chief sources of embarrassment to the two associations. The wire-nail pool had to turn over large sums to its weaker associate, to be used in paying the owners of these old cut-nail machines to keep them idle.

The demand for nails continued very strong through June. The production for the month had been restricted somewhat, in order to ensure control of the market. Before the 12th the mills had sold their entire allotments for the month and were refusing all orders.[1] Yet, at their meeting held the week following, they made a further restriction of their output for July, reducing it to about half the average monthly product for the previous year,[2] and fixing the price for July at $1.55. Dealers anticipated a further advance, and in their desire to protect themselves clamored for nails. Before July 4 some manufacturers had sold their entire allotment for the month and were again refusing orders. By the 10th, few nails could be bought from manufacturers.[3] On July 18 a new "card," or schedule of extras, was adopted. The extras on 10-d. and smaller nails were not changed; but all larger sizes were put on an equality with 10-d., with an extra of 50 cents. The requirement of assorted orders, or a minimum average of extras, was abolished; but the lowest extra was now almost up to the old required average. The base price for August was made $2.05.

The success of the nail combination had been followed by a sharp and general advance in the prices of iron and steel products, and had doubtless contributed to cause it. A market report of May 30 said: "Billets are $17.50 and will likely be higher, and the agreement reached by the wire-nail mills is also having its effect on rods, and prices are very much higher."[4] Between May 1 and August 1 plain wire, from which nails are made, rose from a base price of $1.10 per cwt. to $1.50; wire rods, from which wire is drawn, from $21 per gross ton to $29.00; steel billets, from which rods are rolled, from $15.50 per gross ton to $21.50. There seems

[1] *Iron Age*, June 13, 1895, p. 1248.
[2] *Ibid.*, July 11, 1895, p. 85.
[3] *Ibid.*
[4] *Ibid.*, May 30, 1895, p. 1143.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to have been what is called a good understanding between the producers in these lines, but no formal combination. On August 22, however, this announcement appeared: "The barb-wire trade has been organized on the same lines as the wire-nail trade. A sharp advance in prices has been made. Plain wire will likely advance in sympathy with barb wire."[1] On September 5 it was announced that prices of plain wire had been advanced, "as the result of an understanding arrived at by the manufacturers." The base price of wire nails was advanced to $2.25 on September 1, "in view of the increased cost of raw material." The demand had continued good during August. In the latter part of the month, in consequence of the restriction of output, there had been some scarcity. In September the demand began to fall off notably, but the mills disposed of their allotments for the month. Trade was poor in October, and in November it was very light. The manufacturers complained particularly of the large stocks which the jobbers had on hand, and which some of them were offering rather under the combination price. The pool was strengthened in November, however, by the accession of several companies which had been operating outside.

About November 25 the only large lot of nails which has been imported into this country in many years was received by the Bigelow & Dowse Co., of Boston. Rumor puts the amount at about 5000 kegs, or 20 carloads. Several small lots were received at New York during the next year, but the largest is not believed to have exceeded 500 kegs. It is not known by what means the Bigelow & Dowse Co. were convinced that it would be better not to repeat their operation; but apparently they did not cut the association price, and they brought in no more nails. Jobbers, who investigated the matter with a view to importing, say that English nails could not at any time have been imported with profit, but that German and Belgian nails could have been laid down in Boston or New York at from 50 to 70 cents below the highest price reached by the pool, even after paying the duty of 25 per cent. It required more

[1] *Iron Age*, Aug. 22, 1895, p. 404.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

courage than appears at first sight, however, to venture on placing foreign orders. The German and Belgian nails are shipped in bags, and to make them salable in the American market they must be kegged after receipt, at an expense of from 10 to 20 cents a keg. The head is formed a little differently from that of the American nail, and the tendency of human nature to reject the unaccustomed might cause some objection to it. But the chief deterrent of imports, aside from the tariff, was the power of the pool to drop the price at any time to a point that would cause the importer a very serious loss. Nothing would have been so likely to cause a drop as the fact that large foreign orders were being placed.

The duty on nails does not now serve any purpose except to increase the power of combinations. Nails are produced here as cheaply as anywhere in the world, and are regularly exported. The duty does not protect the industry, and under full competition does not affect the price. But if there had been no duty when the pool was organized, either it would not have been organized, or it would have had to content itself with a much more moderate advance. An excessive advance would have caused the other obstacles to importation to be overcome, and would have led to free purchases abroad.

In December the manufacturers gave jobbers a guaranty on their December purchases against decline in January: that is, they agreed that, if they made a reduction of price in January, they would give jobbers a corresponding rebate on such nails bought in December as they had still on hand. This policy was thereafter followed from month to month till near the breaking up of the association. It was meant to induce freer buying by the jobbers; but its success was slight. The demand for nails was exceedingly light during the winter, and the stagnation propagated itself back to the market for raw material. In a market report of Jan. 2, 1896, is this remark: "Until there is an improvement in the wire and wire-nail trades, it is not likely there will be any demand for rods." On January 16 it was stated from Pittsburg that no sales of rods had been reported in that market for some time. Early in February the nail

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

association announced an advance of 15 cents, to take effect March 1. This galvanized the market into a mild, convulsive movement. The operation was repeated in April, with an announcement of an advance of 15 cents to take effect May 1. Trade was very dull, however, and the manufacturers admitted that the market was a good deal disturbed by outside nails and by the offerings of jobbers. High prices had so curtailed consumption that a considerable quantity of nails, bought before the pool was formed or in its early days, was probably still in the jobbers' hands. These formed a disturbing element, in addition to the growing production of outside factories.

About April 1, 1896, the makers of steel billets formed a pool. The amount of billets in the hands of middlemen, or contracted for by them, was so great, however, that the attempt of the pool to raise prices $3 or more per ton was only partially successful. The wire-rod makers also tried to form a pool, but after much negotiation were unable to agree. Their good understanding, however, seems to have continued.

Early in June the nail association succeeded in coming to terms with the Pittsburg Wire Co. and Baackes & Co., of Pittsburg, by which these companies agreed to stop making wire nails. Their nail mills were by no means of the first rank; but they were large enough to make a considerable figure in the market under the existing circumstances of very small consumption, and they had been selling somewhat below the association price.

If the statements of the manufacturers could be accepted freely, we should need to explain to ourselves the rather curious phenomenon of producers keeping the price of their product abnormally high, contrary to their own desires, in deference to the wishes of their customers. It was semi-officially announced that while the manufacturers came to their meeting on June 3 with the general expectation that some action would be taken looking toward a reduction in price, they were confronted with many letters from jobbers emphasizing the injury that would be done to the market by the reduction in the price of so staple a commodity as nails, and urging the manufacturers to maintain existing prices.[1]

[1] *Iron Age*, June 11, 1896, p. 1384.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Such a phenomenon would not have been inexplicable if it had existed; but an examination of twenty-nine letters of jobbers on the situation, published about that time, indicates that it was essentially a myth. Two of these regarded the price as a matter which concerned no one except the manufacturers, and which no one else ought to trouble himself about. Only seven could be counted against an instant reduction, on any construction of their words. Nineteen either were opposed to the existing high prices or at least went so far as to say that, if a reduction were to come before January 1 (a matter on which they expressed no opinion), it had better come at once. The retailers were unanimous for reduction, complaining of a great falling off in their sales, which some put as high as fifty per cent. They reported that building and repairing were much interfered with.

Meantime a growing number of small mills gave the association increasing annoyance. By July 1 it was estimated that 25,000 kegs a month were made by outside mills. The total sales for June, by the association and outsiders, were estimated at 90,000 kegs;[1] while it was said that the allotment for July was 65,000 kegs,[2] and that the associated manufacturers did not sell so many.[3] These statements were made by the Pittsburg office of the *Iron Age*, which was at the center of the movement, and which ought not, it would seem, to have sent out any but well-founded statements — at least about matters so definitely fixed as the monthly allotment. There is reason, however, for supposing that these figures were too low. A man who knows the innermost history of the combination has said that he does not think there was any month in which the manufacturers in the pool did not sell 150,000 kegs. This statement seems modest enough, considering that the average monthly production for 1895 was nearly 500,000 kegs.

Rumors of concessions and irregularities in price increased. On September 1 the guaranty to jobbers on each month's purchases against decline in the succeeding month was discontinued.

[1] *Iron Age*, July 23, 1896, p. 186. [2] *Ibid.*, July 30, 1896, p. 236.
[3] *Ibid.*, Aug. 13, 1896, p. 334.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It was noted with satisfaction that, in spite of the low prices which had to be made to meet foreign competition, the export trade was assuming relatively large proportions.[1] Early in September several outside manufacturers were induced, on expensive terms, to withdraw from the market. It was claimed that the production of those still outside was insignificant; but, in spite of this claim, the association lost its grip on prices to an extent far greater than at any earlier time. Chicago was the center of greatest disturbance. Nails were openly offered there by jobbers at $2.50, and finally at $2.25, for small lots from store, for which the association price was $2.80. The demand, however, showed a great improvement in September, and it continued good in October. It was estimated that the total output for October would be about 250,000 kegs,[2] or about half the average monthly output for 1895. Soon after October 1, the manufacturers succeeded in patching up the trouble at Chicago; and about the 15th the market reports said that there was "not a suspicion of weakness in any direction," and that the association had "demonstrated its ability to control the situation." It was, nevertheless, hardly two weeks before the final break appeared. About November 1 Chicago jobbers began to offer nails from store at $2.40. The break spread rapidly, and by the 10th the association price was merely nominal. Demand continued light. No one bought more nails than he had to have, because to-day's price was always likely to be bettered to-morrow. About November 20 nails were openly offered at Chicago at $1.50 by representatives of association mills. On December 1 the association held its last meeting, adopted a new card of extras, and formally dissolved. The new extras on common nails are as follows:

| | |
|---|---|
| 20-d. to 60-d. | base |
| 10-d. " 16-d. | $.05 |
| 8-d. and 9-d. | .10 |
| 6-d. " 7-d. | .20 |
| 4-d. " 5-d. | .30 |
| 3-d. | .45 |
| 2-d. | .70 |

[1] *Iron Age*, Sept. 10, p. 512.

[2] *Ibid.*, Oct. 29, 1896, p. 837.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This schedule makes a large reduction in the relative price of small nails, which was undoubtedly intended to shut out the small manufacturers who had been making small nails only. The new card, however, comes much nearer than any previous one to representing the relative cost of large and small nails, under present conditions of manufacture.

## II. *The Course of Prices.*

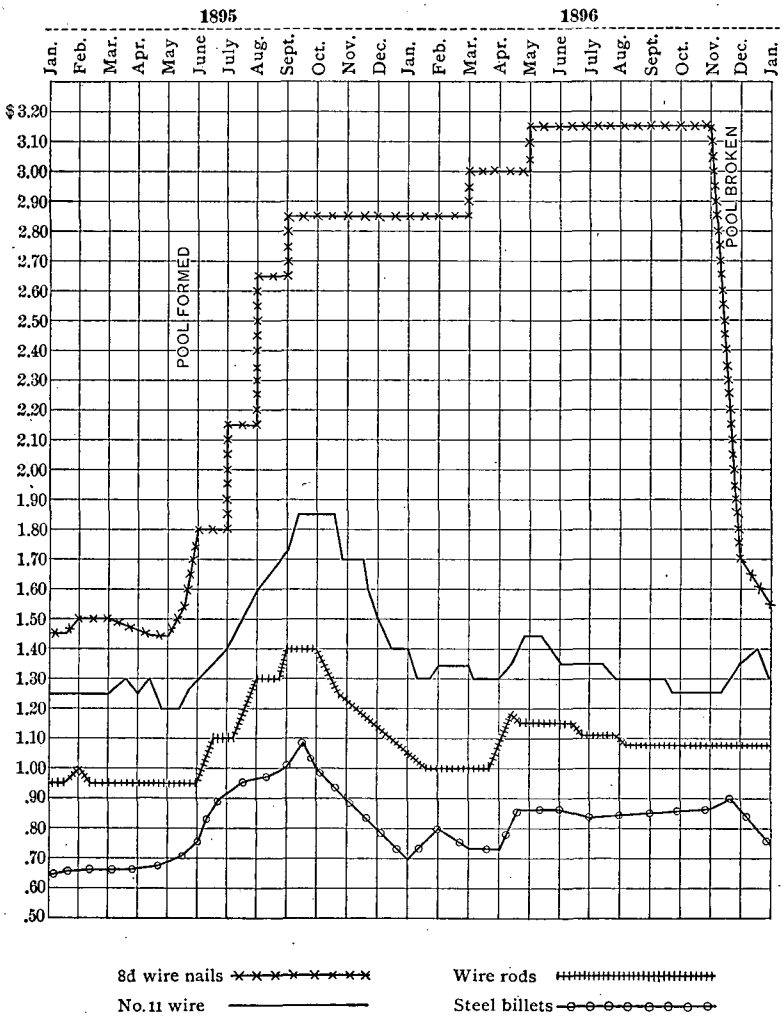
When it is said that nails were selling on May 1, 1895, at $.85, and that on May 1, 1896, the association made the price $2.55, the price appears to have been multiplied within a year exactly by three. The case looks still worse when it is said that 60-d. nails sold in 1895 for $.85 a keg, and in 1896 for $3.05. In reality, while an ordinary bill of nails would have cost on May 1, 1896, at least $1.70 per keg more than a year earlier, it would not have cost three times as much. No nails were sold at the nominal base price in 1896; and though 60-d. nails were nominally sold at the base rate before the change of card in 1895, the statement that the price of 60-d. nails was at one time $.85 gives a false impression, for reasons which I have explained. A comparison of base prices after Dec. 1, 1896 with earlier ones is altogether misleading, because the present extras are much smaller. It has been estimated that a well-assorted order of nails would carry an average extra of about $.62 on the old card, $.70 on that of July 19, 1895, and $.12 on that of Dec. 1, 1896.[1] Perhaps there is no better simple measure of the actual course of the market than the change in the price of 8-d. nails. This size is used in large quantities; and when assorted orders were required, the extra on it was the same as the required average of extras. But this does not give a perfectly true idea of the changes of price. It is necessary to remember that during the life of the association the prices of the larger nails were increased even more by the increase of the extras on them.

The diagram printed below shows the movement during 1895

[1] *Iron Age*, Dec. 10, 1896, p. 1161.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and 1896 of the prices of 8-d. wire nails, of No. 11 wire, from which these nails are made, of wire rods and of steel billets. It is based upon the Pittsburg quotations, as published from week to week in the *Iron Age*. No. 11 wire costs about $.10 per cwt. more than the base sizes quoted in the market reports.


1895
1896
Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec. Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec. Jan.
$3.20 3.10 3.00 2.90 2.80 2.70 2.60 2.50 2.40 2.30 2.20 2.10 2.00 1.90 1.80 1.70 1.60 1.50 1.40 1.30 1.20 1.10 1.00 .90 .80 .70 .60 .50
POOL FORMED
POOL BROKEN
8d wire nails
No. 11 wire
Wire rods
Steel billets

Iron and steel went through a notable boom and collapse in 1895. Without any marked change in the general condition of the country, without any corresponding change in general prices,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

without any strong parallel movement in other countries, the prices of crude iron and steel, and other prices directly dependent on them, rose fast and steadily for some five months, and fell even faster in the next three. Between April 1 and September 15 steel billets rose more than sixty per cent, while by December 15 they were within ten per cent of the old level. It is not easy to get a fully satisfactory explanation of the rise. Near the end of March the Carnegie interests contributed to start it by very large purchases of iron. About the same time the H. C. Frick Coke Company announced an advance of fifteen per cent in wages, and an advance of more than thirty per cent in the price of coke, to take effect April 1;[1] and other coke shippers followed their lead. This made a great increase in the cost of producing and working iron and steel. A little later labor disputes threatened to stop production; and when they were settled, it was by an advance of wages. Other advances were announced by the great steel companies during May and June. These increases seemed to justify and to fasten the higher prices. Men gathered confidence that good times were coming, and that prices were not only to stay up, but to go higher. This confidence, reacting, bred demand; and renewed demand pushed prices higher and higher. The success of the nail combination, and the temporary activity which the advance in nails and the expectation of advance occasioned in the market, were among the causes which contributed to these phenomena. It is doubtful whether the rise of raw material had the slightest influence upon the price of nails; for the rise of nails began before that of steel, was eminently artificial, and was continued after the raw material had sunk nearly to its former price.

### III. *The Interests of Dealers and Laborers.*

The undesirability, from the standpoint of those who want to use nails, of any restriction upon the use of them and of having to pay high prices to get them, is too obvious to be insisted on. The retail hardware dealers suffered with the

[1] *Iron Age*, March 21, 1895, p. 607.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

consumers. Their sales were curtailed, without a proportionate increase in their profit per pound. They had to bear the brunt of their customers' complaints about the price of nails. They complained, also, of the annoyance which was caused by the new card of extras, under which the cheapest nails cost fifty cents per keg more than the nominal base price. When their customers saw nails quoted in the papers at $2.25, it was hard to convince them that the actual wholesale price of 60-d. spikes was $2.75. The jobbers, on the other hand, made large profits on the stocks which they bought before the pool was formed, or soon after; and they were enabled, by the system of discounts and rebates, which the manufacturers maintained, to make at least their usual profit on current purchases. This policy was meant to make the jobbers friendly to the association; and it seems to have been largely successful.

Some of the mills showed a disposition to raise wages as they advanced their prices, and so to make some little division of profits with their men. It was reported that one of the great companies gave its men an advance of ten per cent in June, 1895,[1] and ten per cent more about March 1, 1896;[2] that another raised wages ten per cent in July, 1895;[3] and that a third, after a strike, in September, 1895, advanced its wire-drawers ten per cent and fifteen per cent, and its nail-makers five per cent.[4] But the last-mentioned company, which at its full capacity employs about one thousand hands, at one time cut down its force to about three hundred. This reduction is proportional to the reduction of total sales from 500,000 kegs a month to 150,000. It seems safe to assume that the other companies must have made similar reductions. If half or two-thirds of the laborers were thus thrown out of work, they were not much helped by a small increase in the rate of wages paid to the rest.

The restriction of the employment of labor did not stop at the nail mills; there was a diffused effect which was probably greater, though it is less traceable. There is reason to believe

[1] *Iron Age*, June 20, 1895, p. 1288.
[2] *Ibid.*, March 12, 1896, p. 656.
[3] *Ibid.*, July 18, 1895, p. 129.
[4] *Ibid.*, Sept. 5, 1895, p. 496.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that building, and especially repairing, were perceptibly retarded.[1] To raise the retail price of a keg of nails, say from two dollars to four, must under any circumstances diminish purchases to some extent. The effect will be greater if the circumstances make it seem likely that the rise is temporary. In the present case, there was the added influence of a lively conviction of the buyers that the manufacturers were trying to rob them. If a man thinks that an effort is made to impose upon him, he will often subject himself to a good deal of inconvenience, for the satisfaction of thinking that he has not been imposed on. It is likely that thousands of men did without improvements which they could not afford to do without, because they would not submit to what they regarded as the arbitrary demands of the nail combination. It was, perhaps, in part because the manufacturers left this moral effect out of their reckoning, that the extent of the diminution of demand took them by surprise. Their calculations doubtless accorded with the view recently expressed by a small manufacturer, who experienced a strong demand while the association lasted, because he sold nails a little under the association price. He said:

> I do not think that the high price of nails restricted consumption to any perceptible extent. The item of nails in the cost of building is a very small one, and it was not over five or six years ago that the price was about the same as that fixed by the recent combination.

Consumption was not so small as production during the last months of 1895, or perhaps during the early months of 1896, while the jobbers still had some part of the stocks which they had laid in about the time the pool was formed. But the best information obtainable makes it appear that, during 1896, consumption as well as production must have been small beyond any possible expectation.

## IV. *The Interest of the Manufacturers.*

It is apparently the general opinion that, quite aside from any consideration of the public welfare, and looking only to the pecuniary interest of the manufacturers, the combination

[1] *Iron Age*, June 25, 1896, pp. 1490–1493.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

carried the policy of high prices too far. The association went to pieces after eighteen months, and prices went down to their former level; therefore it is assumed that the combination failed or, at least, that it would have accomplished its purpose more fully by a more moderate policy. The matter does not seem to me so simple. Mr. Parks, who was undoubtedly the guiding spirit in the whole transaction, went into it with eyes very wide open. He had already been connected with several tack combinations managed on the same principles. Of course they came to a rather speedy end; but Mr. Parks seems to have counted their experience as favorable, on the whole, to the policy of a short life and a merry one for pools. Moreover, he still maintains the wisdom of the course that he counseled. When the association collapsed, he said that it had lived longer than its most sanguine promoters expected, and as a financial undertaking had been an unprecedented success.[1] The manner of argument of a man who was connected with the association throughout its existence is as follows:

> Suppose we had put up the price $.15 a keg. A great many men who had had their eye on the nail business, would have said: "Those men have put up the price $.15, and they will probably make it $.25. There is going to be money in the nail business. I will go in." But when we put up the price $1.50, they said: "Those fellows are lunatics. They can't hold together. There will be a smash before they get fairly started. I will keep out of that business." As a matter of fact, we had hardly any new competition during the first year of the association. The new competition came mostly after the beginning of the second year. Then men began to say: "Those fellows have kept together twelve months, and they will probably do it a while longer. They are making a lot of money. I will try to get a slice of it." I am sure we kept the association going longer with a high price than we could have kept it going with a low price. I don't believe it would have lasted six months with a raise of $.25. The high price frightened off some people, and gave us plenty of money to buy off the rest.

It is hardly possible to over-emphasize the distinction between the great consolidations of which the so-called sugar trust may

[1] *Iron Age*, Dec. 3, 1896, p. 1108.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be taken as a type — consolidations which it may not be improper to distinguish specifically as trusts, because the typical examples were first united under the proper trust form of organization — and pools like the nail association. The broad differences of organization have their root partly in the conditions of the businesses concerned, and partly, it may be, in the mental characteristics of the managers; and they issue in great differences of policy and power. It would probably not be impossible to bring the making of wire nails under the control of one great company; but it would be much more difficult than it was to do the like with the refining of sugar. To refine sugar by methods commercially practicable to-day, a man must have hundreds of thousands of dollars to put at the risk of the business. With ten thousand dollars and six weeks' time, however, any man who likes can become a manufacturer of wire nails. A little factory can make them, not quite so cheaply as the great establishments which make their own wire, but at no very great disadvantage. It needs only a small rise above the lowest price at which the best mills can pay interest on the cost of their plants, to enable an indefinite number of small mills to start, making each its twenty-five or fifty kegs per day. This is the weakness of any form of combination in a business of this character—the possibility of a new factory in every thriving town.

No limit can be named to the success of skillful and determined managers of a centralized combination or trust, in any line, in crushing competition. An abnormal lowering of price in the local field of a small competitor is a weapon which needs nothing but persistence to make it inevitably fatal to him; and the revenues which the trust draws constantly from other fields, even if it loses in the region of cut prices, give it an unlimited power of persistence. There is no doubt of the trust's ability to destroy any competitor of a size which does not approach its own. This process is troublesome, however, and somewhat expensive; and in a case in which new competitors can spring up with so little money and in so short a time, the query is whether the situation of the trust would not be unpleasantly like that of a man fighting with mosquitoes.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It probably would be so, unless the trust should be content with a policy of greater moderation in its profits than any trust has yet had the self-denial to adopt. Any trust, having once got control of the market, could make it impossible for any competitor to establish a business which would pay a profit for a day, or would need any attention from the trust to make it disappear. This possibility depends upon the power of the trust to do for society such service as no competitor could do. The representatives of the trusts have not been negligent in setting forth the economies which they are able to effect: the production of all goods by the most efficient plants; the universal use of all improvements, patented or not; the economizing and full use of expert knowledge; the incorporation of subsidiary industries, like the making of packages; the saving of transportation by shipping from the factory nearest the consumer. Greatest of all, perhaps, and most decisive, because it is the economy that is absolutely out of the reach of a competitor, is the commercial economy that depends upon the control of the market — the saving of the expense of inducing customers to buy of this concern and not of that. A trust which should make over the greater part of these savings to its customers, and should content itself with prices which would give it only fifteen or twenty per cent per annum on the value of its productive property, as measured by the cost of replacing it, would probably never be troubled with any shadow of competition. But the general conclusion of competent and disinterested investigators seems to be that, up to the present time, every trust, when its control of the market has been established, has not only kept the whole of the savings of consolidation to itself, but has taken from the public something besides, making prices somewhat higher than they would have been under full competition.

The form of organization of a pool is less unattractive than that of a full consolidation, to a man who values his independent position and dislikes to become an employee; but there is in it as much less power as there is less unity. Under a pool, the economy of closing some establishments may be effected

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

by paying them a bonus, as was done for years by the steel-rail pool. The nail men dealt with outside mills by this plan, but under circumstances and in a way which hardly permit it to be regarded as an economy. It is probable that a pool, with production strictly limited to what the market will easily absorb at the prices fixed, might make some saving in the commercial expenses of advertising and selling, particularly if the circumstances and the policy of the pool were such as to give it a character of comparative permanence. The nail men were probably not able to make any savings of this class. The other economies which are possible to a trust seem to be out of the reach of a pool, while the central organization and the system of mutual watching seem even to add something to the cost of superintendence. It is probably safe to say that nearly all the gain which any manufacturers may make through a pool is made by raising their selling prices.

It can be maintained with a good show of reason that the nail men would have got more profit in the course of years from the policy of full consolidation, with prices permanently fixed low enough to make competition impossible. But experience has not yet shown this policy to be practically attainable in our present stage of civilization. Between that extreme and the other, which the nail men chose, it is doubtful whether there is any mean which they would have found golden. The choice practically open to them appears to have lain between a tolerably large profit, which might possibly last two or three years, and a very large one, which might be expected to last six months or a year. They chose the very large one; and they kept it, or at least kept the price up, for eighteen months. It is true that a very large part of the profits, especially in the later months, was consumed in subsidies and other expenses of the association. Some well-informed men, intimately connected with the trade and friendly to the manufacturers, think that their policy was short-sighted. The question has more sides than one, however, and it seems possible to make out a very good case for the view that the manufacturers did not choose the least profitable course.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## V. *The Interest of the Public.*

It may not make much difference to the manufacturer whether he reduces his costs or raises his selling price; but it makes a great difference to the consumer. Aside from any lowering of prices, it is to the public interest that economies be made — that a given product be obtained with less cost and less exertion. If a consolidated trust would sell as cheaply as competing producers would have to sell, keeping to itself the whole of its economies but taking nothing more, the economies would benefit the public somewhat in the end. The production of wealth and the sum of capital are certainly increased by them; and such increase of capital and of production tends in itself to the general good. The actual policy of the trusts, in taking from the public something in higher prices besides their gain through saving, complicates the question; but there is a very considerable gulf between the effects of a trust, like the American Sugar Refining Co., and the effects of a pool, like the Nail Association. The actual lessening of the human effort that is required for a given result does accompany the trust, and we are all privileged at least to cherish the pious hope that some small fraction of the gain may ultimately work its way around to us. The pool, on the other hand, does not effect any saving of human effort. Its avowed purpose is to increase its members' share of the products of such effort. Its form of organization is probably incapable of producing the greater part of the social benefits which the trusts lay claim to; and it does not make much pretence of trying to produce them.

The claim of the trusts to a socially desirable effect on price takes two forms — that they make prices lower and that they make them steadier. The former effect has probably not appeared permanently in any instance; and the latter does not seem to have appeared generally. Both effects are, however, within their power. Unsteadiness of price, so far as it results from the action of trusts which have once established their

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

control of the market, is generally the result of high prices. The raising of prices above the competitive level causes competition to develop; and competition can be dislodged only by buying it out or by sinking prices below the competitive level. The trusts are regarded by their managers as permanent institutions, and they tend toward the policy which the managers think likely to bring the greatest net revenue in the long run. They tend toward a comparatively moderate forcing of present profits, with a fair degree of attention to the future. In consequence, if the prices of their goods are not steadier than they would be under full competition, they are probably not much less steady. The nail pool, on the other hand, was an ephemeral thing, designed for a quick rush into the market, a grasping of whatever gains might be within reach, and then — collapse. Its purpose was that of a corner — to get the greatest possible amount of profit out of those who had to have nails within a limited time. Its effect, therefore, was a great exaggeration of the normal unsteadiness of prices.

Too great productive capacity is one of the reasons which are regularly given for forming combinations. The providing of machinery for making far more goods than are demanded at the necessary prices is one of the wastes of competition. Of course it would not be practicable, with the completest centralization, to keep the nominal capacity of machinery down to the actual demand; for variations in the quantities demanded, variations in the kinds demanded, the necessity of being able to make many kinds at each of several places — all forbid an exact adjustment. There is no doubt, however, that here a trust can effect a saving over competitive methods, though it may nullify this benefit more or less completely by stimulating new competition through too high prices. The policy of the nail pool, on the other hand, greatly stimulated the tendency to the overproduction of machinery. The association tried to check it by subsidies to machinery-makers, but with only partial success. Such makers of nail machinery as would accept orders were overwhelmed with them. It was said that persons anxious to get into the nail business "overbid each other, and lucky buyers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of machines were offered premiums for their bargains."[1] When the pool collapsed, the machines which the artificially stimulated demand had called forth became, for the most part, dead property. Both to the owners and to society, they are an almost entire waste of capital.

In this way the pool aggravated one of the fundamental difficulties of the situation which it was formed to change. This is perhaps its most visibly lasting effect, and from it a serious obstacle arises in the way of renewing the pool. So far as their current business is concerned, the manufacturers might have been in no very different position if the pool had not been formed. The price of nails is now about the same, allowing for the change of extras, as in the spring of 1895. Of the hundreds of new machines which were set up during the eighteen months of fever, a large part have ceased to turn out nails, and as the months go by, others will cease. Some of the older and less efficient will go, one by one, to the scrap pile, and some of the newer may replace them. With the continued progress of invention the rest will doubtless grow relatively less and less efficient. The growth of the country, too, will make a fixed number of machines continually less important as a possible factor in the market. These, however, are processes of years. For a long time to come the hundreds of machines which stand ready to start at a week's notice must be reckoned with by any new combination. A small manufacturer, who was not in the pool, wrote in February, 1897: "I doubt if there will be another combine for a year, but I think it will ultimately come." It will come, as surely as seedtime and harvest; but not in one year, nor, in all probability, in two. It will probably not be possible, until several years have gone by, to form another association which shall effectively control the market.

## VI. *Conclusions.*

Only two rather small classes are probably ready to give thanks for the concentrations of industrial and social power which are loosely covered by the name of trusts — those who

[1] *Iron Age*, Dec. 10, 1896, p. 1147.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

draw wealth and power from them, and those who, desiring a general absorption of the control of production by society, think that the trusts are forwarding their aim; and some of the former class perhaps would not give thanks without certain haltings of conscience, while many of the latter account the case as one of those in which God makes the wrath of man to praise him. But an unfavorable judgment of the economic and social effects of an institution does not at all involve an unfavorable ethical judgment of the men who visibly represent it — at least in comparison with the rest of the community. The members of the nail association did what the rest of us would have done in their places. One who was active in forming the association gives this statement of their point of view:

> There is nail machinery enough in this country to produce four times as many nails as can be sold. When there is no pool the makers simply cut each other's throats. Some people think there is something wicked about pools. When we were trying to get up the nail pool, I talked with directors of companies who held up their hands against going into any sort of combination. I said to them, "How much did you make last year?" "Not a cent." "Are you making anything now?" "No." "Well, what do you propose to do? Sit here and lose what capital you have got in the business?" Some of them thought they could run along until some of the weak concerns died off. But I tell you plants don't die. If a concern fails, they reorganize it. They buy in the plant cheap, they have got rid of the old debts, and they are in better shape to compete than ever. There is only one way to make any money in a business like the nail business, and that is to have a pool.

This is the aspect that things would wear to us if we were in the position of the manufacturers. Some of us are perhaps opposed to combinations; but so were some that went into the nail pool. In weighing any man's opposition to combinations, it may be doubted whether it is of the sort to keep him out of them, till he has sailed the strait between failing profits and the trust, and has passed the siren voice.

The trusts simply do, with larger resources and higher organization, the things that every manager of a competitive business is trying to do. It is possible that we see the char-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

acter of such things better when they are done on the larger scale; it may be one of the missions of the trusts to give us clearer and higher notions of ethics. But it seems probable that, if we begin to cast stones, the houses of the trusts will not be the only ones to suffer. If it is asserted to be wrong to crowd up the prices of the things we sell and to crowd down the prices of things we buy, wrong to make our business large by the destruction of our neighbor's, a good deal may be said for the ethical superiority of the altruistic man who should refuse to do these things; but no ethical distinction can be drawn between the man who does them strongly and successfully and the man who is only able to do them with less strength and less success.

The mechanism of the trust, properly so called, is perhaps not unworthy to be ranked among the greatest inventions of this century, either as a monument of intellectual acuteness or as an engine of momentous social effects. Like most of those other inventions which are more unanimously classed as useful, and for which individuals get credit, the invention of the trust did not really depend on the activity of any particular men. If neither Bell, nor Reis, nor McDonough, nor Edison had lived, a score of other men were looking for the telephone, and would soon have discovered it. Scientific and technical knowledge had reached a point from which it could not but be discovered; and no man could do more than hasten the discovery by a little. Just so, the development of the pool, the trust and the giant consolidated corporation was inevitable in the social and economic conditions of our age. If the world had lacked Mr. Rockefeller and his associates, it had other men of business and other lawyers; and it would not long have lacked the trust.

CHARLES E. EDGERTON.

COLUMBIA UNIVERSITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# THE NATURE OF CORPORATIONS.

THE most important and conspicuous feature of the development of society on its formal side during the past half-century is the growth of corporations, and especially of industrial corporations.[1] They have shared to such an extent in the rapidity and complexity of general social growth that social theorists have failed as yet to attain a full understanding

[1] "The facility with which corporations can now be formed has also increased [the supreme court's] business far beyond what it was in the early part of the century. Nearly all the enterprises requiring for their successful prosecution large investments of capital are conducted by corporations. They, in fact, embrace every branch of industry, and the wealth that they hold in the United States equals in value four-fifths of the entire property of the country. They carry on business with the citizens of every state, as well as with foreign nations, and the litigation arising out of their transactions is enormous, giving rise to every possible question to which the jurisdiction of the federal courts extends." — Address of Justice Field at the centennial celebration of the organization of the federal judiciary, New York, Feb. 4, 1890, 134 U. S. Rep. 742.

"Before 1850 we had [in Michigan] about forty-five mining corporations, seven or more railroad corporations, a few banking corporations, several plank-road corporations, and a few of a miscellaneous character; all, of course, under special charters [with the exception of religious corporations]. General laws to the number of one hundred and fifty-six have been passed from time to time since 1850, for incorporating almost every kind of lawful business and association, and the result has been that we now have about eight thousand corporations which are organized under those general laws, divided as follows: manufacturing and mercantile, twenty-five hundred; mining, thirteen hundred and twenty-eight; railroad, seventy-nine; street railway, one hundred and thirty-two; transportation, one hundred and twenty-three; state banking, one hundred and fifty-nine; charitable, two hundred and forty-eight; improvement, seventy-seven; miscellaneous, twenty-eight hundred and eighty-two. To this great number of domestic corporations must be added one hundred national banking corporations, and a large and not ascertainable number of foreign corporations, . . . which do business in this state by its express permission." — Address of President Alfred Russell at Jackson, Michigan, March, 1894, on "Corporations in Michigan," Publications of Michigan Political Science Association, No. 2, p. 97.

"Not far from one quarter of the wealth of the United States is held by trading corporations. It is not improbable that half the permanent business investment of the country is owned in this way." — Arthur T. Hadley, Railroad Transportation (1885), pp. 42, 43.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of their relations to modern life, even if it be conceded that serious efforts have been made to that end.[1] Like all other criticism of immature social institutions, the criticism of corporations has been largely negative and destructive, without recognition of their permanent and enduring elements. An effort must be made, however, to obtain a broader view of them — a view that, on the one hand, will reveal their necessary and permanent relations to society and social progress, and, on the other hand, will exclude such relations as are purely accidental or temporary. No little difficulty is caused by the failure to separate the "corporation question" from questions allied to it; it must be constantly borne in mind that this is primarily a question of social form, and only secondarily one of social content or function. Human energy is the content; the corporation is one of the forms through or within which the human energy becomes human activity. For example, the corporation question is often carelessly confused with that of the consolidated control of capital, or "trusts"; but the latter comes within the scope of the former only through an inquiry as to what extent the corporation, by virtue of providing a fit or usual form for the activity of trusts, affects such activity by restricting, expanding or otherwise influencing it.

An exceptional degree of independence and self-reliance must be exercised in a study of corporations, because the historical and statistical material for the work is so scanty and unreliable, and the work of interpretation already done is of so little service. Less enlightenment on the nature of corporations than one would be inclined to expect is given by jurists, either in legal treatises, in opinions or in judicial decisions; though the jurists alone, with the exception of recent sociologists, have pretended to offer a systematic treatment of the subject. When new social forces make their appearance and begin to be expressed in new social relations, the jurist endeavors to explain and control them by the application of legal principles already established in analogous social relations rather than by the application of principles that would be discovered

[1] *Cf.* Arthur T. Hadley, Railroad Transportation, p. 43.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

through scientific study of the workings of the new forces.[1] For most practical purposes, the lawyer must assume that society is not subject to historical development, though such an attitude, while it conduces to the stability and conservation of social institutions, imposes on the student of institutions the necessity of exercising extreme caution in the use of technical legal material. Yet, without pretending to discard the established legal principles, legislatures and courts have made so many modifications of the law of corporations that the principles formulated by Coke and Blackstone have become in modern times quite inadequate as a foundation for it.[2] Consequently the later writers who have treated of private corporations have struck at the very root of the older law by discarding, in whole or in part, the cardinal theory of "artificial personality," [3] though for very good reasons they have not been followed by writers on public corporations.

Writers of political history, it must be admitted, cast little light on the subject of corporations. Constitutional history, as written, may be relied on for a knowledge of the form or framework of the state, and popular history, for a knowledge of national activity. Corporations, however, have constituted

[1] When sleeping-cars first came into extensive use, the first efforts of the courts were to construe the liabilities of the companies operating them as those of either common carriers or innkeepers, but it was found later that the legal rules relating to those two classes of persons were inapplicable to sleeping-car companies. Now, "according to the weight of authority, the liability of the sleeping-car company is neither that of a common carrier nor of an innkeeper." — American and English Encyclopædia of Law, *sub verbo* "sleeping-cars."

It is believed that the chief difficulty in the legislative and judicial control of corporations at present is due to the effort to apply to them legal principles elaborated in a system of law founded on individual social units instead of modifying the existing system so as to make its principles applicable to aggregate social units; the theory of "artificial personality," though harmless when applied with due limitations, has been the source of much confusion in legislation and legal decisions relating to corporations.

[2] *Cf.* Justice Miller in Liverpool and London Insurance Co. *vs.* Massachusetts, 10 Wallace, 566.

[3] Morawetz on Private Corporations, § 1 (2d ed.); Taylor on Private Corporations, § 22. W. W. Cook, in his work on Stock and Stockholders (§ 1), seems to adhere to the conception with modifications; as does also J. L. Lowell in his work on Transfers of Stock. See article on "The Legal Idea of a Corporation," in *American Law Review*, XIX, 114–116.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

for the most part the framework of society, subordinate to that of the state, and have been overlooked or ignored by both classes of historians.[1] The results achieved by recent sociologists are more serviceable. In recognizing that all men and all combinations of men have their peculiar and appropriate social functions exercised in relations and sets of relations subject to constant change and development, they have been led to a comprehensive view of the formal or institutional side of society, and have avoided the narrowness of both jurists and historians. But in their efforts to classify and systematize social forms and functions, they seem not infrequently to have chosen objectionable bases of classification and to have somewhat arbitrarily exaggerated or disparaged particular attributes of institutions. To such tendencies more extended historical and statistical study of particular institutions must act as a corrective.

All human activity has its social as well as its individual aspect. Man is so essentially a "social animal" that his every act, however insignificant, has its effect, directly or indirectly, on his fellows. All men sustain social relations to all other men. The effect of the social relations — growth, stagnation or decay — is a product of two factors, the content (function) of the human activity and the organization (form) within which it is exerted. The existence of each factor implies the existence of the other. Social functions are exercised only through the machinery of social forms; yet the forms are continually suffering modification to meet the demands of new or altered functions. In general, function and form depend on and react upon each other; growth, stagnation and decay in each are reflected in some degree in the condition of the other. The corporation is a group of natural persons embodied in one of the many forms of organization within or through which certain

[1] Even Stubbs, in his monumental Constitutional History of England, views the English municipalities at the end of the Middle Ages almost solely as a part of the central administrative machinery of the state. Mrs. J. R. Green, in Town Life in the Fifteenth Century, has given an adequate treatment of one phase of corporate life. Gross's Gild Merchant is the only complete study of any one class of corporations.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

classes of social functions are exercised. The limitations of form and function will appear in the following review of the several generic attributes of the corporation.

1. *Associate activity.* — The corporate form is one within whose limits associate, as distinguished from individual, activity is exercised, and comprehends both the interrelations of the associated members and their relations with other organs of society. The early distinction of corporations as aggregate or sole is manifestly illogical and has been almost entirely abandoned in practice.[1] There are probably no corporations sole in the United States, with the possible exception of church parsons in Massachusetts;[2] if there are any, their powers and duties may be fully interpreted by the laws of trust and trusteeship. It is significant that the later text-books on corporations give no space to the subject of the corporation sole. The inclusion of certain individuals in a classification of corporations was undoubtedly considered necessary on account of the presence in some public officers (or offices) of attributes common to them and to corporations, such as the legal limitation of activity (found in all public offices) or the limitation of control over property held for public purposes. From another point of view, the extended use of the term is explained by a particular application of the theory of artificial personality — a legal exaltation of the purpose for which property is held or power exercised above the personality of the person or persons holding the one or exercising the other.[3] Again, while the

[1] "The idea of a corporation sole has been claimed as peculiar to English law, but the novelty consists only in the name; and it has been justly remarked that 'as so little of the law of corporations in general applies to corporations sole, it might have been better to have given them some other denomination.' "— Dr. Wooddeson, Vinerian Lectures, I, 471, 472.

"There are very few points of corporation law applicable to a corporation sole."— Kent, Commentaries, II, 273.

[2] "It is possible that the statutes of some states vesting the property of the Roman Catholic church in the bishop and his successors may have the effect to make him a corporation sole; and some public officers have corporate powers for the purposes of holding property and of suing and being sued."— Blackstone, Commentaries, bk. i, p. 468, note of editor (Cooley).

[3] This idea is elaborated fully by Pollock and Maitland, History of English Law, I, 469-495.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

functions of corporations aggregate and corporations sole may be the same, the latter lack the continuity of existence that is so prominent a characteristic of the former. When it is said that the king never dies, and that he thus resembles a corporation, the actual continuous group life of the latter is confused with the continuity of existence of the public office not possessed by its successive incumbents.[1] Groups, but not individuals, may have continuous existence; social functions of both groups and individuals may endure continuously. Holding property for particular public purposes, with incapacity to use it for other purposes or to alienate it, does not alone make the holder a corporation, though it is one of the attributes of a corporation that its use of its property is limited by the terms of the charter to which it owes its creation. So-called corporations sole differ from true corporations, not in function, but in form; the former lack the internal social structure of the latter.[2]

2. *Creation by the state.* — The corporate form, or sum of peculiar relations subsisting between the members of the corporate group and between them and other members of society, is created by the state; or, after spontaneous origin and maintenance by force of custom, is approved with the same legal effect as if originally created by it. Neither the group nor its functions, but only the internal and external personal and group relations under or within which the group exercises its functions, are created by the state. The progress of civilization demands the increasing exercise of associate activity, but not necessarily in the corporate form. As compared with the state, a primary, sovereign group, the corporation is a secondary, derivative, subordinate group. Likewise, ecclesiastical corporations, under the earlier conception of the church as society primarily organ-

[1] "The law has wisely ordained that the parson, *quatenus* parson, shall never die, any more than the king, by making him and his successors a corporation. By this means all the original rights of the parsonage are preserved entire to the successor; for the present incumbent and his predecessor who lived seven centuries ago are in law one and the same person; and what was given to the one was given to the other also."— Blackstone, Commentaries, bk. i, cap. 18. This is verbal jugglery. See also the case of Overseers *vs.* Sears, *infra*, p. 285, note.

[2] See discussion of functions of corporations, *infra*, pp. 290–294.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ized on its religious side (whether or not coextensive with the state), were subgroups of the church, deriving from it their internal and external social relations. To be sure, all social activity, whether of individuals or of groups, is limited and conditioned by the system of law under which it is exercised; for the state is itself, like the corporation, a group (though superior to all others) acting through or within certain self-imposed forms; but the corporate form brings to the members of a group internal and external relations different from the usual and regular social relations imposed on individuals by the existing system of law.[1] Not only is the corporate form artificial and exceptional, but the field of group functional activity is narrowed or widened, or otherwise artificially and exceptionally created or modified, by the act of the state. Nor need the corporate relations owe their existence to a direct and special act of the state; they may be created through any subordinate agency of the state that it may see fit to select, or by virtue of "general incorporation" laws, which cause the peculiar legal relations to arise upon the performance of certain

[1] Whether given legal relations are regular or exceptional depends, of course, on the nature of the system of law under which the relations are recognized or created and enforced. Some systems, such as that of early Rome, have been based on a composite unit, as the family or some other group; others — such as the Imperial Roman law and the English (and American) law since the destruction of feudalism — have been based on the simple unit, the individual. The members of a corporation act not as units, but as parts of a composite unit, and their social relations are to that extent exceptional as compared with the regular social relations of individuals regarded as social units.

It is sometimes prophesied with a considerable degree of assurance (as in the quotation in the note on page 292, *infra*) that society is to attain in the near future a stage of development in which the social unit will be aggregate or composite instead of individual, as at present; and that the corporation is the institution through which socialism, in a more or less modified form, is to be made effective. Unfortunately for such views, the historical development of corporations has not as yet afforded them much support. If the corporate form were always used, as one might expect, from a consideration of its adaptability, it might serve as a stepping-stone to socialism; but as a form of social activity, it has been perverted to highly individualistic uses, and has actually produced more exaggerated individualism. The use of corporations has tended to result, not in coöperative commonwealths, but in trusts. There is much more reason to expect that, if socialism comes at all, it will derive its organization from above, not from below — from the subdivisions of the state and not from the corporation; in other words, it is more likely to be state socialism than coöperative socialism.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

preliminary acts by incorporators.[1] Some fields of social activity, such as the construction and operation of railways[2] and the formation and management of banks, may by modern law be occupied only by groups of persons organized in the corporate form. Whatever may be the purpose of granting special group forms, or of contracting or expanding the field of group activity, the act is always that of the supreme social group organized as the state or the church. This attribute of corporations has always been fully recognized by courts of law, and the enforcement of the rule of strict construction of corporate powers and acts has been consistent with such recognition.[3]

3. *Voluntary inception; compulsory endurance.* — The assumption by a group of the corporate form and the acceptance by individuals of membership in the group are voluntary, as distinguished from the compulsory political status of citizens in the state and its subdivisions. To this distinction it may be objected that the consent of the citizens of a municipality is not necessary to its incorporation, and that acceptance by them of a municipal charter is not necessary to make its provisions operative. Though that is now the well-settled rule with relation to public corporations, it is so generally regarded as repulsive to the spirit of English and American political institutions that some preliminary act in the nature of consent or acceptance on the part of the prospective citizens of the municipality is required before the law of incorporation is permitted to take effect. But, as a matter of fact, municipalities have exhibited a

[1] Blackstone, Commentaries, bk. i, pp. 473, 474.

[2] This is a broad statement of the fact as to railways. The exercise of the right of eminent domain is delegated to corporations alone. Some exceptional circumstances might enable individuals to construct and operate railways, but, speaking in general terms, the function is restricted to corporations. When railroads are sold at forced sale under decrees of foreclosure or on executions, it is held that an individual may purchase and operate the property, but that he may not succeed to the corporate franchise. Opinions in some cases seem to contemplate only a temporary operation of the property by the individual purchaser. At all events, individual ownership and operation of railways are regarded as justifiable only under extraordinary circumstances and when absolutely necessary to the attainment of justice.

[3] Beach on Public Corporations, I, 92, and cases cited; Dillon on Municipal Corporations, I, § 91; Sedgwick on Construction of Statutory and Constitutional Law, 338; American and English Encyclopædia of Law, *sub verbo* "corporation."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

strong and increasing tendency to lose the character of corporations and to become more truly subgovernmental administrative bodies. This tendency has been expressed in the enactment of general incorporation laws, the more particular classification of municipalities, the increased interference by legislatures in the government of municipalities and the modification of the doctrine of consent to be incorporated. Municipal self-government is being rapidly transformed into a mere power of determining within narrower limits the means of executing laws imposed by state governments. The decadence of city government in England in the seventeenth and eighteenth centuries was evidenced by the multiplication of local commissions acting under the supervision of the central government. American cities seem to be passing at present through a similar phase of development, which indicates, so far as the present study is concerned, a decadence of corporate municipal life.[1] But to say that the inception of the corporate form is voluntary, is not equivalent to saying that non-members may be voluntarily exempt from the external effects of the organization and activity of corporate groups. One must be a citizen of some state; and whether or not a member of any corporation, his conduct must

[1] It is not out of place to note at this point the general rule that the prevalence of corporations has always been characteristic of periods of social expansion, as distinguished from those of social organization, or, if the expression be better, of extensive rather than intensive growth. New forces rapidly developing have had their growth in the form of corporations; when the movements of the new forces have reached the maturity of their effects, they have been digested — subjected to organization within the political framework of the state — and their corporate form has decayed. The new forces of post-feudal life in England were organized in corporations, and within them the new element of English personal liberty had its chief development and expansion; when the movement reached its maximum in the sixteenth century, the organization of the new social forces was accomplished through a stronger central government and improved administrative machinery, — national poor-laws, responsible parliaments, *etc.*, — while the municipal corporations decayed. Likewise, the movement of the national expansion of England that followed 1550 was characterized by the use of great trading and colonial corporations; but when the maturity of the movement was reached, the corporations were replaced by a more efficient home government, new colonial governments and independent (American) states. It ought to be expected, then, that the expanding social forces of American city life will be absorbed by the state governments as soon as their movements have reached the stage of maturity — but that will mean that the corporate character, to a certain extent, has departed from city life.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

conform to the conditions imposed by the organized activity of the state, its subordinate institutions and the autonomous corporations created by it. There is a particular sense in which even the state organization may be described as voluntary; even if imposed by external force, it may be said to depend for its continued existence on the consent of the subjects upon whom it is imposed. But some kind of a political organization a society must have; and once organized, the state may coercively organize subgroups of its citizens for the exercise in detail of the functions of government. Such coercively organized groups are not, however, true corporations, though the name is often applied to them; legal writers have well described them as quasi-corporations, because they have many of the attributes of corporations, though lacking the essential elements of voluntary inception and autonomy.

After the corporate form has been assumed by a group, it is compulsory, from the side of the state, upon all its members, until forfeited for misuser or nonuser or regularly put aside in the manner provided by the state. From the side of the corporation, however, the corporate form may not be assumed or retained against the sovereign will of the state. The doctrine that "a charter is a contract" is vicious; the conception of a bargain between a state and a group of its citizens is illogical; the only final guaranty for the protection of rights and for the performance of duties is a sound social sentiment.

The prevalence of corporations is, therefore, characteristic of a state of society in which individual and not state initiative is relied on, and in which individual responsibility is expected to serve as a steadying force. In rapidly developing communities the individual initiative has often been unduly encouraged by making the maintenance of corporate relations (once assumed) less compulsory. Perpetual-lived corporations are usually born in epochs of social expansion; under settled social conditions, corporations are usually assigned a limited term of life.

4. *Autonomy, self-sufficiency, self-renovation.*— The group of members within the corporation is (*a*) autonomous, (*b*) self-sufficient and (*c*) self-renewing.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(*a*) Within the limits of the particular corporate form and function imposed or granted by the state, the corporate group controls the conditions (as to both form and function) of its own activity, without direction, interference or revision by other persons or groups of persons, including the state itself.[1] In this respect the true corporation is distinguished from purely administrative or subgovernmental bodies, which possess and exercise only enough discretion to execute properly duties for the most part directed, controlled or revised by superior social groups. Thus the autonomy (and thereby the corporate character) of American municipalities is greatly limited by the interference of state governments in local affairs through frequent modifications of their charters, the creation of state commissions for local purposes, and the almost excessive use of the writs of injunction and mandamus by the courts. Though the courts theoretically recognize the element of autonomy by refusing to compel by mandamus the performance of other than purely ministerial acts, or to prevent by injunction a reasonable exercise of a corporation's powers within the terms of its charter, the present tendency of legislation and judicial interpretation is to widen the category of ministerial acts and to interpret the "reasonable" more strictly. The limits of municipal activity are being narrowed, though the actual volume of activity within the narrower limits may be increasing. From the standpoint of historical social development, this characteristic of corporate relations has been most important; it is a proposition not difficult to establish that the earlier stages of nearly all the movements in the direction of what is compre-

[1] It is not necessary to assume that the state has made a contract with a corporation, the terms of which are expressed in the charter granted, in order to insure autonomy or stability of corporate life. It is entirely a question of public sentiment. In no other country could corporate powers and duties be so easily modified or destroyed by law as in England, for Parliament is supreme; but the social sentiment in favor of "vested interests" is so strong that English corporations have always enjoyed an exceptional degree of independence. Rarely have corporations been deprived by Parliament of their powers, even after long-continued misuse or abuse of them, without being provided with a liberal pecuniary compensation for them; yet no contract relations between England and the corporations could be considered to have existed.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

hended in "personal liberty" have been organized in the corporate form.[1]

(*b*) During the period of existence granted to a corporation by its charter, its general powers must be sufficient to assure it existence and maintenance, and to give the ability to exercise effectively the particular powers granted to it and to perform the duties imposed upon it, independently of external social agents, except in so far as all members of society are dependent upon their social environment. Such powers, if not expressly granted, are uniformly held by the courts to have been granted by implication, some being considered as of the essence of the corporate organization itself, and others as necessary to the exercise of the particular activity of the corporation described in its charter. For example, if a corporation could elect necessary officers only when directed by some external agent so to do, it would not be self-sufficient; it might actually cease to exercise its functions for want of the official organs through which to act. Such a body would be merely an abortive, not a true corporation. In 1684, Charles II, by threatening to use the writ of *quo warranto*, compelled the London livery companies to surrender their old charters and accept new ones. In the latter it was provided that no one should be elected warden or clerk until his name should have been approved by the king; that the king should have the power of removing any warden, assistant or clerk; and that the wardens and commonalty were to be subject to the lord mayor and court of aldermen of the city of London (themselves to be appointed by the crown), who were to approve of all persons admitted to the clothing or livery.[2] The exaction of these concessions by Charles II and the attempt to enforce them by James II were readily recognized as tyran-

[1] For the part played in the movement by mediæval towns in England, see Mrs. J. R. Green's Town Life in the Fifteenth Century, II, 437–448. For the connection between the organic structure of the English trading and colonial companies and the national and state constitutions of the United States, see The Genesis of a Written Constitution, by William C. Morey, in the *Annals of the American Academy of Political and Social Science*, April, 1891, I, 529 *et seq.*

[2] Herbert, History of the Twelve Great Livery Companies of London, I, 218.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

nous, and had much to do with the expulsion of the Stuarts and the revolution of 1688.

(*c*) A corporate group without power to renew its membership during the term of existence granted to it in its charter might cease to exist, and thus fail of its purposes for want of members. The existence of a group at all implies the necessity (real or assumed) of a plurality of persons for the due performance of some social function; if there were no such necessity, there would be no group. If, by the grace of the state, the group become a corporation through the assumption of a peculiar form, its character as a group does not cease to be necessary for the exercise of its social functions. The diminution of a very large number by the loss of even a single member might, in an extreme case, so impair the group as to make it inefficient for its work. The purpose of conferring the corporate form, however, is not to destroy the character of the group as such, but to make it more efficient by providing it with a form appropriate for its peculiar activity. Failure to provide adequate means for the renewal of a corporation's membership, therefore, would be inconsistent with the original purpose of conferring the corporate form. If at the same time the necessity of autonomy and self-sufficiency be given due weight, the means of renewal must be within the group itself — it must be self-renewal.[1] Thus it is an established principle that the loss by a corporation of an "integral part," in the absence of power to supply it, works its dissolution. It has also been held that when no provision is made in a charter for the filling of vacancies that may occur, the power to do so by coöptation is implied.

[1] In The Overseers of the Poor of the City of Boston *vs.* David Sears et ux. (22 Pickering, 122), it was contended by counsel that "the corporation thus created is more analogous to a sole than to an aggregate corporation. The two kinds run into each other, and the demandants (Overseers, *etc.*) are to be regarded as a sole corporation, or a quasi-sole corporation, with some of the incidents of an aggregate corporation. It is a necessary and unseparable incident of an aggregate corporation that it have the power of perpetuating itself by choice of members. Here the corporations have no such power, but they are chosen by the inhabitants of Boston; and they have a civil death annually, as the sole corporation dies a natural death." See pp. 277, 278 *supra*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The three attributes here considered under one head (because each involves and implies the others) are in some cases very difficult to identify. They are all, however, found developed in some degree in every corporation, as well as in many bodies not usually regarded as corporations. When they are not highly developed, the corporation proper is not easily distinguished from the purely administrative body; indeed, it must be admitted that a critical analysis of most so-called quasi-corporations would reveal in them the presence of the three attributes. The question is one of degree of development: the corporation is in distinct, effective and clearly perceptible possession of them; in the purely administrative body they are indistinct, rudimentary and almost imperceptible, and accordingly such a body ordinarily depends on the state for supplementary activity to enable it to exercise its functions. The necessity of autonomy and self-sufficiency is the basis of the doctrine enforced by the courts (as an exception to the general rule of strict construction of corporate grants and powers) that corporate powers and duties shall be so construed as to permit the accomplishment by the corporation of the original purpose of its creation.[1]

5. *Compulsory unity.* The creation of a corporation contemplates that, in all its relations with other organs of society, it shall act and be acted upon as a unit. Accordingly, it is provided by its charter (supplemented by its by-laws) with means of determining the group will of its members, with agencies through which the group will shall be executed, and with agencies through which other social organs shall maintain their relations with it. In the element of compulsory unity, corporations are distinguished from most other associate bodies, and resemble most nearly the state itself. Blackstone very aptly called them "little republics," though he would have been more faithful to history if he had called republics "big corporations."

[1] Beach on Public Corporations, I, 93, and cases cited; Dillon on Municipal Corporations, I, § 87, and cases cited; Field on Private Corporations, pp. 66, 67; Taylor on Private Corporations, § 121.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The conception of compulsory unity is one of the sources[1] of the theory of "artificial personality"; the corporation is said to have a common name, and to be, "for certain purposes, considered as a natural person,"[2] "vested by the policy of the law with the capacity of acting in several respects as an individual."[3] There is nothing harmful in the recognition by the state of such a capacity in a subgroup of its citizens, if the fact that it is still a group be not lost to view. Though unified in action, the corporation is none the less a group: indeed, its unity of action preserves it as a group; if each member persisted in following his own will in preference to finding a common ground on which a group will might stand, the group would be inactive, and lawyers would readily determine it liable to forfeit its charter for nonuser. The fact that the common will of the group may not coincide completely with the will of any one member ought not to exempt the members from responsibility for the effects of its execution. It is purely a legal fiction that a corporation is an "artificial person" — "a conception, which, if it amounts to anything, is but a stumbling-block in the advance of corporation law towards the discrimination of the real rights of actual men and women."[4] It must be admitted, however, that the theory of artificial personality has been discredited in practice, by the rejection or modification of many of the principles founded on it. One of these, the principle of limited liability, has been the source of an unusual amount of confusion. It is a logical deduction from the theory of artificial personality, that, as individuals, the members of a corporation have no ownership of debts due to it, and are not liable for debts owing by it: "si quid universitati debetur, singulis non debetur; nec, quod debet universitas, singuli debent." The principle has been so extensively applied that the corporate form has come to be used more to secure the advantage of limited liability than for any other purpose.[5]

[1] The other source of the theory is found in the nature of the functional activity of the corporation, which will be considered below.—*Infra*, p. 290.

[2] Angell and Ames on Corporations, p. 1.

[3] Kyd on Corporations, p. 13. [4] Taylor on Private Corporations, § 51.

[5] "The distinctive feature of the modern trading corporation is the limited liability of its members." — A. T. Hadley, Railroad Transportation, p. 43.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It may be conceded that some social functions are so public in character as to justify setting a limit to the pecuniary risk of those who perform them. But such limitation is independent of the social form (whether corporate or not) in which the persons acting are organized. There is nothing in the corporate form itself to justify the exaggerated application of limited liability. This pernicious movement has decreased the personal responsibility on which the integrity of democratic institutions depends, and has introduced into both investments and social services a dangerous element of insecurity. Limited liability of members was not a feature of early corporate life in England, and its prevalence in this century has been due to an overestimation of the importance of national internal development.[1] More settled economic conditions have already resulted in some improvement; and the element of personal responsibility is gradually pushing its way back into the management of corporations so far that limited liability, instead of being an advantage, is often regarded by promoters and investors as a positive detriment.

6. *Motive in private interest.* A corporation is composed of persons having a private or particular (or local), not merely a public or general, interest in the subject-matter of the group activity, whether it be political, social (in the narrower sense), religious or economic. This is partly deducible from the voluntary inception of corporate relations; for only those will desire to assume such relations who have the satisfaction of a private interest as their motive. A distinction in this respect is traceable between the quasi-corporation and the corporation proper. What the citizens of a county do as such they do as members of the inclusive society of the state: their acts are

[1] The sentiment is fairly expressed in the following words: "It is a well-known fact that many of the enterprises which have greatly developed the resources of the country, and which have been of great benefit to society, would never have been undertaken without corporate organizations. No new enterprise is a cinch [*sic*]; it is more or less uncertain and speculative, and where it involves large expenditures of capital, unless the men who undertake it can know the limit of their liability, it will remain undeveloped." — Suggestions for Amendment of the Laws Governing Corporations in the State of Michigan, by Jay P. Lee, in Publications of Michigan Political Science Association, No. 3, pp. 74, 75.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

limited (theoretically, at least) to such as it is necessary for them to do as members of the general society of the state, and do not include such as they have merely a particular, private or local interest in doing. The same may be said of the citizens of a municipality; but here there is a field of activity in which they are considered to be actuated by a particular, private or local interest, not shared by society in general. Lower in the scale, members of a so-called private corporation, such as one for purposes of trade, are actuated almost entirely by private interest. In some cases, however, associations upon which a compulsory organization has been imposed by the state, have become corporations by perverting the machinery of the imposed organization to uses dictated by the private interests of the associated persons; such was the origin of the old English corporation of the Merchants of the Staple, or Staplers.

Public and private, however, are relative terms: what is a public and what is a private interest are determined only by the stage of development that has been attained by a particular society. In a rapidly growing community, a body of citizens so influenced by patriotic sentiment as to establish a business enterprise largely for the purpose of "booming" their country may be said to be actuated by something more than mere private interest; while a similar venture under mature and settled social conditions would have little of the public element in it. Public and private, social and individual, interests are always found in combination, and sometimes so blended and confused that it is extremely difficult to determine which is predominant. Legislatures and courts of law have often been driven in the application of the principle to assume apparently inconsistent attitudes toward very similar facts, though the correctness of the principle has not been denied. The principle must be adhered to, even if in many cases so hard to apply. In the corporation proper, then, private and particular interest is permitted to seek its own satisfaction; and public and general interest is consulted, if at all, from the side of the corporation, only incidentally, collaterally or secondarily, as set forth in the paragraph following.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

7. *Functions public and appropriate for associate activity.* — The social functions performed by corporations have had two enduring qualities. They have been (*a*) such as were regarded, under successive sets of social conditions, as conducive to the welfare of the public and of society in general, rather than to the particular welfare of the persons performing them; and (*b*) such as were more advantageously performed by associate than by individual activity. The first has reference to the relations of the activity of the corporate group to the society of which it is a part; the second, to the relations of the group to the conditions under which its activity must be exercised.

(*a*) What now appears at first blush too narrow a view of corporate functions would probably have been accepted as sufficiently comprehensive before the beginning of the nineteenth century. The unprecedented growth of private corporations since 1830 seems to discredit the statement that their functions have always been regarded as having a public end; but it is believed that even private corporations find justification for their existence in the general opinion that public welfare is materially promoted by the more facile exercise in corporate form of social functions whose exercise is prompted by the pursuit of private interest.[1] Nor is the limitation inconsistent with the statement made in paragraph 6 above. The corporate form has always been intended and used to promote public welfare through private interest, by affording to the latter a social mechanism through which adequately and effectually to express itself. The almost insuperable difficulty in the use of the corporate form has been to reconcile the private motive and the public purpose of the activity exercised within it. But the difficulty is due not so much to the corporate form itself as to the character of the activity; indeed, it is urged with much force that the use of the corporate form has a tendency to

[1] See note on p. 280, *supra*. "The purpose in making all corporations is the accomplishment of some public good. Hence the division into public and private has a tendency to confuse and lead to error in investigation; for unless the public are to be benefited, it is no more lawful to confer exclusive rights and privileges upon an artificial body than upon a private citizen." — Mills *vs.* Williams, 11 Iredell (N. C.), 558.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ameliorate the unfortunate social conditions incidental to some kinds of social activity. The class of social evils usually included in discussions of the "railway problem" are evils due more to methods of transportation under modern social conditions than to the peculiar legal form in which the men engaged in transportation are organized. Ownership and operation of railways by individuals would entail greater evils than their ownership and operation by corporations.[1]

The public end of corporate functions is another source of the pernicious legal theory of "artificial personality."[2] The function is personified, and the aggregate of rights and duties involved in the performance of the function is separated in thought and law from the succession of natural persons or groups of persons in whom they are reposed. Then the persons or groups are known to the law as corporations to the extent of their connection with the social functions in view. Hence the division of corporations into aggregate and sole. The early English parson was the *persona ecclesiae;* the church was personified in him; the land of which he had a limited use was the property of the church, or the property of society devoted to particular religious services performed by the parson.[3]

The private corporation pure and simple is a product of nineteenth-century social, political and industrial conditions, of which democracy and individualism are the foundations. The belief in the equality of men, combined with the tendency to restrict the area of state activity at the end of the eighteenth century, checked the creation of corporations involving class privileges, inequality and the limitation of individual activity. The state, it was held, must not delegate to corporations powers that it could not itself safely exercise. On the other hand, so far as functions dangerous to the liberty of the individual absolutely required associational activity, the nearer the associations

[1] *Cf.* A. T. Hadley, Railroad Transportation, p. 48; and R. T. Ely, The Future of Corporations, *Harper's Magazine*, LXXV, 260, 261 (July, 1887).

[2] See p. 275, *supra.*

[3] See Pollock and Maitland, History of English Law, I, 483–486.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

were to the individual the less dangerous they seemed to be; accordingly corporations became more numerous in the early part of the present century. But again, no class distinctions could be tolerated; the assumption of the corporate form and the exercise of corporate powers must be free to all. General incorporation laws were therefore justified by social theories. The distinction between public and private functions is never easy to determine, and the problem is not made easier by democratic theories of society and the state; all functions have tended to reach the same level, and "incorporation for any lawful purpose" has been freely permitted to all. A false definition of public and private functions has been the cause of the confusion. The "private corporation" is a contradiction in terms, and has no place in a sound organization of society. The present tendency in the business world (as well as in the courts) is to distinguish more clearly between the various purposes for which corporations are organized, and to estimate the responsibility of the organized persons accordingly.

(*b*) The importance of associate activity as a means to social ends has been only gradually developed and appreciated in the progress of society. Before the present century even partnerships were unusual, and when they existed were usually composed of members of the same family. The object of pre-nineteenth-century corporations was primarily to provide and to limit the conditions of individual activity, and only secondarily to afford a means of expression for unified associate activity. It is only in the nineteenth century that the latter attribute has been magnified (concurrently with a depreciation of the former) to such a degree as to menace seriously the stability and permanence of the individual as a social unit.[1]

[1] "The modern form of corporation prevailed because it was found to be the best form of ownership for the large permanent investments under concentrated management which are required in modern industry." — A. T. Hadley, Railroad Transportation, p. 46.

"As John Stuart Mill says, [the union of capitalists and laborers] must be brought about by the development of the partnership principle. No one . . . can tell exactly what form this will take, but some things seem already clear. Corporations will play an important part in this development, as they gradually become more democratic in their tendencies. Corporations and coöperative enterprises will

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The principle of association may make itself manifest in two degrees: first, in the imposition of conditions of activity by a group on its individual members; and second, in the absorption of the activity of its members by the group as a unit. The activity in the former case is so clearly appropriate for associated persons that it will not be discussed. As to the latter, whether absorption by a group of the activity represented by its membership is advantageous, depends upon the relation between the unit of greatest efficiency of the activity itself and the unit of ability to exercise the activity; in general, when the former exceeds the latter, association will be advantageous. The ratio of the two factors varies in successive stages of society, and the necessity of association varies accordingly. In some cases, both degrees of association have been manifested in the activity of the same corporation; in the fifteenth century fishing vessels were frequently owned by a borough and used by the burgesses in common, each conducting his business for himself, but according to the ordinances of the corporation, and using the corporation vessels in common with his fellows. The principle of joint-stock management of the entire activity of the corporation was first fully applied in the East India Company, and in that case it was a gradual evolution; originally an "open" regulated company with several groups of investors and boards of directors, it later by degrees came to be a complete joint stock company with one body of investors under unified management.

The corporate function has both the attributes just considered. However fully developed either attribute may be, the function is not truly corporate if the other be wanting.[1]

become more and more nearly assimilated until they can scarcely be distinguished." — Richard T. Ely, "The Future of Corporations," *Harper's Magazine*, LXXV, 260 (July, 1887). See comment on this view in the note on p. 279, *supra*.

[1] "To render such an establishment [of a joint stock company] perfectly reasonable (*a*) with the circumstance of being reducible to strict rule and method, two other circumstances ought to concur. First (*b*) it ought to appear with the clearest evidence that the undertaking is of greater and more general utility than the greater part of common trades; and secondly (*c*), that it requires a greater capital than can easily be collected into a private copartnery. If a moderate capital were sufficient, the great utility of the undertaking would not be a sufficient

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

After the foregoing somewhat extended discussion of the nature of the corporation, the following is offered as a definition: A corporation is a body of persons upon whom the state has conferred such voluntarily accepted but compulsorily maintained relations to one another and to all others that, as an autonomous, self-sufficient and self-renewing body, they may determine and enforce their common will; and in the pursuit of their private interest may exercise more efficiently social functions both specially conducive to public welfare and most appropriately exercised by associated persons.

JOHN P. DAVIS.

BROOKLYN, N. Y.

reason for establishing a joint stock company, because, in this case, the demand for what it was to produce would readily and easily be supplied by private adventurers. In the four trades [banking, fire, marine and capture insurance, canals and city water supply] both those circumstances concur."— Adam Smith, Wealth of Nations, bk. v, cap 1.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# FRANCIS A. WALKER'S CONTRIBUTIONS TO ECONOMIC THEORY.

FRANCIS AMASA WALKER was a born leader of men. As soldier or as statistician, as college president or as writer of books, he called forth strong personal loyalty in all with whom he came in contact. He had a rare combination of courage and courtesy. He knew a vast number of facts, but he was always striving to add something more to that knowledge. It is mere commonplace to say that no other man has had so wide an influence on the economic thought of America in the present generation. Wherever he led the way thousands of readers followed. He took up ideas that had been overlooked, and in a few years made them central members in the accepted body of economic doctrine. There were three leading ideas for which he contended — his theories of profits, of wages and of money. In two of the three he has had overwhelming success. What was heresy yesterday has become orthodoxy to-day. There is no better evidence of the completeness of his success than the fact that the scientific world is now discussing, not Walker's theories of profits and of wages, but the exaggeration of those theories.

In giving an estimate of his contributions to political economy, I am going to speak plainly of what he may have overdone or left undone, no less than of what he did. I do this reverently, for to General Walker I owe more, professionally and personally, than to any other economist, past or present. I know that he would have wished to have the article written in this way. He was not one of those men of strife for whom the most fitting death-tribute is to leave them peacefully at rest. He was great enough not to need any artificial enhancement of his greatness.

The first of the three ideas with which Walker's name is identified is his extension of the notion of marginal gain to the theory of business profit. While he was not the first to dis-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cover the analogy between profit and rent — for he had been in some respects anticipated by Whately, Mangoldt and others, not to speak of his father, Amasa Walker — he was the first to lay due stress upon it, and to give to it proper weight in the theory of distribution.

Adam Smith had analyzed the price of commodities into three parts — wages, rent and profits. Ricardo had shown that what Smith counted as rent was itself resolvable into two elements: profit on capital invested in the land, and true economic rent — a differential gain due to the superior advantages of some lands over others in the matter of fertility or location. The effect of Ricardo's analysis was to narrow the use of the term rent and to widen the use of the term profit. Profit was in turn further analyzed into interest, insurance and wages of superintendence; and the differences in the rates of profit for different industries or for different men were regarded as due to the varying cost of insurance or of superintendence in the several cases.

It was at this point that Walker applied his criticism. He showed that what had been called wages of superintendence was not to be regarded as wages at all. It was not money advanced by a capitalist to a laborer, but money retained by that capitalist or employer for himself out of such receipts as he might ultimately realize from the sale of his product. It was not a fixed sum based on the cost of education, and analogous to the salary of a foreman or superintendent, but an extremely variable sum based on the superior efficiency of one capitalist or employer over another. In view of these facts, Walker felt himself justified in applying to profit the same kind of analysis which Ricardo had applied to rent. He separated it into two parts: a return to the capitalist, which takes the form of interest; and a return to the employer, or *entrepreneur*, which constitutes true profit. He thus had a division of the product into four shares, instead of three — not wages, profit and rent, for laborer, capitalist and landowner respectively; but wages for laborer, interest for capitalist, rent for landowner and profit for *entrepreneur* or employer.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

More than this, the laws which governed this newly discovered share, the profit of the *entrepreneur*, were, according to Walker, closely analogous to those of economic rent. Each share in distribution represented a surplus rather than an expense—an excess of price above cost rather than a cost. Hence these elements of rent and profit might vary all the way from zero upward. There was "no-rent land" and there were "no-profit employers"—land whose product barely remunerated the labor and waiting involved in its cultivation; mechanical industries that barely repaid the labor and abstinence involved in their conduct. All superior land yielded rent; all superior commercial brains yielded profit. The extent of such superiority determined the measure of rent or of profit in each case. The fact that there was not enough of the superior land or of the superior brains to supply the whole market, prevented the price from falling to the level of cost set by the best land or the best brains, and gave to each possessor of such land or of such brains a surplus of price above expense which constituted his share in distribution. From this theory it followed that neither profit nor rent was an element in the price of products, in the same sense that wages or interest was an element; that prices would not be raised by the imposition of taxes on rent or profit, nor lowered by their remission; that both rent and profit were results of the existing rate of demand for products, rather than causes of the existing rate of supply of those products.

These conceptions are so fully wrought into the current economic thinking of the present day that it seems hard to imagine a time when they were unfamiliar. They have been combined with the doctrines of marginal utility and of normal price in such a way as to present a strikingly clear picture —I am tempted to say a fallaciously clear picture—of the process of exchange and distribution. We think of a demand curve made up by consumers to whom the utility of the article to be purchased gradually diminishes; of a supply curve made up by producers for whom the cost of delivering successive supplies of the article gradually increases; of a normal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

price at which the utility to the last purchaser just warrants him in compensating the cost to the last producer; and of triangular areas representing excess of utility above price for the purchasers and of price above cost for the producers — consumers' and producers' rent respectively. In these ways of looking at things Walker had no part. He was, like most of his generation, totally unfamiliar with Cournot. If he had read Jenkin at all, it had been only very late in life. He had gone over Jevons's *Theory of Political Economy*, and had tried to incorporate its conclusions in some of his own books; but he had not really assimilated it into the general structure of his economic mind, nor did he make use of it as an instrument of original analysis. Under these circumstances, he left his discovery of the character of profits to stand by itself. He did not see the light which Marshall's combination of utility and expense curves might be made to shed upon the gains of producers and consumers; nor did he, on the other hand, expose himself to the dangers which those who use this combination suffer, in treating "expense" and "utility" as if they were correlated or commensurable terms, and in estimating "total benefit" by adding the two things together.

What is called "consumers' rent" does not correspond to the gains which we ordinarily know by the name of rent, but to the differences between the sums which the various producers actually receive under competition, and those which they would be ready to take if they did not have the benefit of such competition. For instance, there is a market rate of wages of two dollars a day, and a market rate of interest of four per cent. Some laborers would be ready to accept one dollar a day if no better terms could be had; some investors would be ready to lend money at two per cent, or even at one per cent, if no higher rate were offered. The two-dollar rate for all laborers, and the four-per-cent rate for all investments, which in our ordinary computations form parts respectively of wages and of interest, are the chief elements of producers' surplus. Walker made no analysis either of these elements of surplus, or of the corresponding consumers' gains. Here he was at least consist-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ent. His successors have sometimes made the positive mistake of analyzing consumers' gains on one basis, and producers' gains on another — a course which involves serious error.

The only criticism to which Walker is fairly open in this matter applies to Ricardo also; and it is one, I believe, which Walker himself was ready to admit as being in some degree justified. He does not give proper weight to the existence of differential losses, nor adequately discuss the relation of these losses to the corresponding gains. Both rent and profit are received on the basis of past investments of capital, which may have failed to produce a return sufficient to cover the wages advanced and the interest guaranteed. The degree of failure will depend upon the want of skill or foresight shown in the investment; but habitually there will be a considerable number of cases of such failure. Instead of starting from a point which yields no profits or rent, production will start from a point which yields less than none. It is, of course, perfectly proper for Ricardo or Walker to ignore these cases in their theories of rent or profit; but such facts render some of their deductions from these theories quite untenable. A tax on rent or profit, for instance, *will* affect the price of products; for it confiscates a possible gain in case of success, while leaving a risk of loss in case of failure, and thus interferes with certain investments of capital, which otherwise would be made on a large scale, and which, if made, would greatly enhance the supply of products. In fact, any treatment of this subject which regards capitalists as a class separate from land-owners and *entrepreneurs* is full of pitfalls. Human nature being what it is, the *entrepreneur* must be either a capitalist or a fraud. The two parts of his gain, as *entrepreneur* and as capitalist, may be subject to different laws; but he needs capital of his own to earn either part honestly. We may say that one part of his income is due to the use of capital as a subsistence fund, and the other part to the use of capital as an insurance fund; but each gain is one that attaches to the possession of capital. This is a point which it is impossible to neglect in practice and unwise to ignore in theory.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

More widely known, though less original, are Walker's contributions to the theory of wages. Down to about 1860, the wage-fund theory had been all but universally accepted by economists. Even those who most objected to its conclusions on ethical grounds, like Lassalle, did not undertake to criticise the doctrine, but accepted it as true, and made its acceptance the basis of an indictment against modern society. It was first actively attacked by Longe in 1866, then by Cliffe Leslie in 1868, and by Thornton in 1869. Thornton's book had a wide influence, and sufficed to convert John Stuart Mill; but it never obtained such wide popularity as was enjoyed by Walker's book on *The Wages Question*, which appeared seven years later and gave the deathblow to the old views. In his succeeding works he did not rest content with this destructive criticism, but gradually developed a positive theory of his own, to the effect that wages constitute the residual share in the product of industry. He held that rent, profit and interest were determined by fixed laws; and that whatever was not by these fixed laws specifically assigned to rent, profit or interest, accrued to the benefit of the laboring class — in other words, that the laborers, as a body, necessarily received the benefits of increased efficiency and of modern improvements.

We shall best understand the wage-fund controversy, and Walker's part in it, if we separate the question of wages into three parts:

1. What is the source from which wages are paid?
2. What determines the share of the laborer (and of other producers) in each unit of product?
3. What determines the amount received by the laborer per unit of time?

It is in the confusion between these questions, rather than in the difficulty of answering either of them separately, that most of the wage controversies have arisen.

To the first of these questions there can really be but one answer: Wages are paid out of capital. It did not need Taussig's learned book to tell us this. There are, indeed,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

passages where Walker appears to claim that wages are not advanced out of capital; but the cases which he adduces are so exceptional in their nature as to emphasize Taussig's point rather than Walker's. It would seem as though Walker had at times confused questions of source and questions of measure, and had thought himself obliged to make a show of defending an untenable position as to the source of wages, lest he should seem to abandon a sound and tenable position as to the measure of wages.

The second question is the one which occupies most of our present writers on distribution. It is really not a question of distribution at all, but one of *remuneration*. It does not concern itself with rates of income, but with elements of price. In dealing with the problems involved in this question, Boehm-Bawerk's method of analysis is probably the one most familiar to the scientific students of this generation. Boehm-Bawerk shows how, while advancing wages to the laborer, the capitalist retains a certain portion of the expected product as compensation for waiting, and shows what causes determine how large a proportion of the product shall be thus retained. He is not occupied with determining the total amount advanced, or the total amount retained; but is concerned with the ratio between these two amounts, and with the time of waiting which is involved.

In analyzing rent, profit and interest, the problem with which Walker dealt is similar to that of Boehm-Bawerk, in spite of the great difference in methods used. But when he came to wages he changed his policy. He dealt with wages as a share of the national income. In his mind, the income of the laborers depended on what the laborers produced. Walker's residual theory of wages was based on a complete and half-unconscious passage from a problem of remuneration to a problem of distribution. The *shares* of the landowner, the *entrepreneur* and the capitalist depend upon competition; the *rate* of wages depends upon efficiency; therefore, Walker inferred, all the benefits of efficiency accrue to labor. Had he applied to the laborer's share in each unit of product the same reasoning

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that he applied to the capitalist's or to the landowner's share, he would have found that it, too, depends upon competition; had he applied to the annual income of capitalists or of landowners as a class the same reasoning that he applied to the income of laborers as a class, he would have found that these incomes also depend upon efficiency of labor. Under a given percentage of distribution, *all* rates vary with the collective efficiency of the industrial organism.

The question at once arises, how so able an economist as Walker allowed himself to be involved in such a confusion. The answer, if I have rightly guessed it, is one which is characteristic of his whole work as a theorist. I think he made the mistake which he did, because in the nineteenth century this particular mistake involves little or no practical error. Walker was a man of facts. He probably knew more commercial facts that were worth knowing than any other man in the world. He knew which theories explained facts, and which theories did not. The wage-fund theory, as he had inherited it from his father, was emphatically of the latter class. It did not harmonize with the facts at all. It said that wages should be high in many cases where they were actually low, and *vice versa*. Walker made a new analysis that corrected this error. When he had gone so far, he was quite content to let the rest of the traditional theory remain undisturbed. This habit of mind explains his attitude toward the question of wages, and his extraordinary influence over popular readers. He made new paths where new paths were obviously needed, and there only. He rendered the service — which to nineteen readers out of twenty is the all-important one — of making theory fit actual facts.

But how does it happen that an imperfect theory so well explains nineteenth-century facts? Because of the somewhat fortuitous circumstance that the cheapening of products in this century has chiefly affected those things of which the laboring classes are large consumers. *A*, *B*, *C* and *D* engage in a partnership. The share of each partner is fixed by previous arrangement. *D* is the only member of the firm who consumes

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

its products on a large scale. Suppose that the efficiency of production is doubled and the price falls one-half. *A*, *B* and *C* will be left where they were before; *D* will appear to be the residual claimant. General Walker would say: "The shares of *A*, *B* and *C* are fixed; *D* gets what he produces." He failed to see that *D* gets what he produces, simply because he *consumes* what he produces. The statement that *D*, the laborer, is the residual claimant in industrial society as it exists to-day seems to be pretty nearly correct; but it is correct in virtue of a circumstance which Walker fails to bring out in his analysis.

There is another point closely allied with this, in which Walker hardly realized the bearing of the theory which he advocated. He was right in laying stress on the fact that the product of the laborer constituted the measure of the laborer's reward. But he thought that the point at issue between his theory and the wage-fund theory lay in the antithesis between a future product and a past product; whereas, it really lies in the distinction between a *rate* of production and a *fund* of accumulation. Wages as an element in distribution are a flow and not a fund. A fund of capital divided by a number of laborers will not, as a simple question of mathematics, give a *rate* of wages. It will give a *quantity* of wages. There is nothing in the terms of the solution to show whether that quantity means wages per day or per week or per year. To assume without proof, as did so many of the English economists, that it means wages per year, is to commit one's self to an *ultra*-physiocratic [1] conception of distribution which this same school of economists was quick to reject.

The failure to grasp the distinction between funds and flows, so well emphasized by Newcomb, was specially unfortunate in that it led Walker to a theory of money at variance with the general tenor of his economic work. There is a curious parallelism between the wage-fund doctrine, which he was so zealous in attacking, and the quantity theory of money, which he was

[1] The "net annual revenue," of the physiocrat, is in some sense a true wage fund.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

equally zealous in defending. The wage-fund doctrine holds that wages depend on a ratio between quantity of capital and amount of population. The quantity theory of money holds that prices depend on a similar ratio between quantity of money and amount of products to be exchanged. Both theories are open to the same criticism: they neglect the varying degrees of rapidity of circulation — in the one case of capital, and in the other of currency.

Walker attacked the quantity theory in the one case, and expanded it in the other, on grounds of practical experience. He saw that wages did not rise when unconsumed products were plenty and did not fall when unconsumed products were scarce; he saw that prices in several important instances did rise when special circumstances had increased the supply of money, and did fall when circumstances had prevented such increase. He saw that the growth of productive industry in recent years, combined with the demonetization of silver, had been attended with a fall in prices; he developed a theory to account for that fall, and to persuade governments to take measures for arresting it, without much regard to the question whether that theory did or did not correspond to his analysis of other economic problems.[1]

Walker's theory of prices was very much like Mill's. The chief difference was in the definition of money. Mill included only money of redemption — the means by which an account could be discharged. Walker included all instruments which circulated from hand to hand, like bank notes. The important function of money, he said, was that of a medium of exchange. The current transactions of commercial life constituted a demand for such a medium of exchange. The amount of coin, government notes and bank notes constituted the supply of the medium of exchange. Whatever increased the demand tended to make the value of money rise, or to make prices fall;

[1] I think that Walker was justified in saying that nearly all of the theoretical answers to his position were quite unsatisfactory. By far the most interesting of those which I have seen is that of Knut Wicksell, in the last (February) number of Conrad's *Jahrbücher;* but it would take too long to discuss the detailed points which it involves.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and *vice versa*. Whatever increased the supply tended to make the value of money fall, and to make prices rise; and *vice versa*. The influence of bank deposits on prices he seems to have regarded as comparatively slight. Such deposits for the most part represented, to his mind, transactions which were arranged on a credit basis from the outset. The deposit account did not affect the supply of the medium of exchange; the most that it could do was to preclude the demand for the medium of exchange which the transaction in question might otherwise have created.

There are two main lines of attack which can be adopted by the critics of the theory. In the first place, it may be urged, as Walker himself urged against the wage-fund theory, that the really important factor in the problem is the efficiency of the money rather than its quantity, so that a theory of prices based primarily on the latter serves to distract attention from the really important factor in the case. Or again, it may perhaps be urged with even greater effect that the demand for money is not primarily or chiefly a demand for the medium of exchange, but a demand for a reserve to secure contracts. This view of the function of money seems to explain far better than the other the functions performed by banks in increasing the efficiency of money, and paves the way for a theory of credit which shall neither overrate nor underrate its effect on prices.

This question as to the primary or chief function of money gains special importance in connection with Walker's recent book on *Bimetallism*. That book contains the following conclusions, either explicitly stated or very clearly implied:

1. That statesmen and governments, if they had been so minded, could have maintained gold and silver in concurrent circulation at something like the old ratio.[1]

[1] While General Walker disclaims any intention of discussing the question of the ratio at which the two metals are to be coined indiscriminately, none of his arguments as to the merits of bimetallism have any force unless it would have resulted in keeping the average ratio of value of silver to gold considerably higher than it actually has been. For a large part of his argument rests upon the assumption that under free silver coinage the quantity of money in the world would have increased more rapidly than it has. Now in order that silver money should

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

2. That their failure to do so is largely responsible for the fall in prices and profits during recent years.

3. That the present position of the laborer, though doubtless somewhat improved by modern inventions, does not show so much gain as economic theory would warrant us in expecting and demanding; and that the deficit may fairly be charged to an appreciating currency as its cause.

If it were true that money were only to be regarded as a medium of exchange, and that every other function were incidental and subordinate, we should probably have to assent to the first of these points. The government has great power in making any article available as a medium of exchange in virtue of its mere act of coinage. But the demand for a reserve to secure contracts cannot be thus influenced by the government. If a man has made gold contracts, the possession of legal-tenders does not constitute an available reserve; and the attempt to increase the money supply by the issue of legal-tenders proves wholly fatuous. Not on the basis of theory, but on the basis of the number of gold contracts now in existence or likely to be put in force in the immediate future, the monometallist is justified in taking direct issue with the points summarized from Walker's *Bimetallism*, and in saying:

1. That the demonetization of silver, while it doubtless helped to produce[1] a fall in prices, was not an arbitary act

have increased more rapidly than it has, there must have been either a decrease in the use of silver in the arts, or an increase in the output from the mines. Neither of these results would have taken place under free coinage unless the commercial price of the silver had been thereby increased.

[1] Some of the monometallist writers weaken their case and correspondingly strengthen Walker's case by asserting, or seeming to assert, that there was no effect of this kind, basing their statements on the fact that other causes were working to the same end. But, without the demonetization of silver, those other causes would not have produced the observed result in anything like the degree to which it has actually made itself felt. The real question is this: Would the governments, in the face of these other causes, have been able to maintain free coinage of silver at the old ratio, and concurrent circulation of gold side by side with the silver? If it should appear that they could probably have done so, then we must treat demonetization as an independent cause of the fall in prices; if it should appear that they could not have done so, then the acts of demonetization become a relatively unimportant mediate link in the chain of causation on which the monometallist lays so much stress.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of governments, but an expression of the demands of the commercial world. Had statesmen abstained from such demonetization, it is far from certain that the subsequent course of gold prices would have been materially altered. There is little or no evidence that bimetallic legislation has the power which General Walker ascribes to it; and the experience of France, on which Walker relies to prove his own view, rather goes — witness the curious cases cited by D'Avenel from mediæval French history — to prove the contrary.

2. That the responsibility for the present fall in prices, with the loss of profit and the irregularity of employment by which it has been attended, must be sought in the previous period of inflation, rather than in the present period of depression: in other words, that the business methods in use from 1850 to 1873 left the commercial world with an inadequate money reserve, and were not of a kind that could have been permanently maintained, even supposing the coinage laws to have suffered no change — except perhaps by continued depreciation of the currency.

3. That there is no clear ground, either historical or theoretical, for supposing that a continued depreciation of the currency would have made the laborer's position any better than it is at present. For, so far as the bimetallic argument is made to rest on the residual theory of wages, it is not leaning on a very strong support.[1]

It was Walker's misfortune to issue his book on bimetallism at a time when comparatively few people could or would study it in just the way that it deserves. It came before the public in the midst of a political campaign when the silver party made use of some of its statements to support practical measures which its author most strongly disapproved, and when the gold party was so prejudiced by this misuse of the book that most of its members shut their eyes to its real scientific value. It had been Walker's hope to make the discussion of interna-

[1] Of course this is not intended as either an exposition or a criticism of the bimetallic theory in general, but of those distinctive arguments for bimetallism on which General Walker laid special stress.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tional bimetallism a means of preventing the angry agitation which had sometimes threatened to involve the United States in a policy of independent coinage of silver. His book was already in press when the silver issue came up with unexpected acrimony and put peaceful argument on the subject out of the question. And then, when the campaign was over, and the time was come for quiet discussion, he left us suddenly.

The last letter which he wrote me ended with the words: "I am glad that you are going to criticise my *Bimetallism*." If ever there was a man who cared more for a candid discussion of the truth than for his own particular statements of the truth as he understood it, it was General Walker. Certain it is that there were few men I have ever known who had so little to fear from straightforward truth-telling.

> His life was gentle; and the elements
> So mixed in him, that nature might stand up
> And say to all the world, "This was a man."

ARTHUR TWINING HADLEY.

YALE UNIVERSITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# REVIEWS.

*The Speaker of the House of Representatives.* By M. P. FOLLETT. With an Introduction by Albert Bushnell Hart, Ph.D. New York, Longmans, Green & Co., 1896. — xxvi, 378 pp.

In a brief preface Miss Follett expresses in generous terms her sense of obligation to helpers, especially to Professor Hart, without whose "continued help . . . this study would never have been completed," and "to Radcliffe College, which, in connection with Harvard College, makes such work possible." The admirably written introduction, contributed by Professor Hart, tells of the importance of the subject, of the reasons for the neglect with which it has been treated hitherto, of the spirit and methods of the author, of the arrangement of the book and of some of its more important conclusions. The speaker, says Professor Hart, is, next to the president, the most powerful man in the nation, and his power is increasing. No "publicist or statesman" has "made the speakership his study," because "public men do not stop to consider the familiar powers of the speaker. The ordinary books on public law pass him over, because he is hardly mentioned in the constitution. . . . While to the general public . . . the speakership, as a powerful office, . . . is less in the public eye" than the presidency. "Another reason why there has hitherto been no study of the speaker, founded on investigation, is the volume and variety of the sources which have needed to be examined." He adds:

> To study the historical growth of the speaker's office, and to show from the actual practice of Congress what his functions have been and now are, has been the long and patient task of Miss Follett. . . . This book represents the strenuous labor of a well-equipped investigator for more than half of each year during four successive years. Whatever may be done by diligent search into the records, by visits to Washington, by conferences with ex-speakers and by a comparison of all her varied material has been done by the author. . . . Miss Follett appears to have worked in an impartial and scientific spirit to solve a knotty problem in history and practical government.

Professor Hart, finding the author's conclusions to be "that the speaker's power is necessary and salutary; that he was never intended to be a moderator, but from the beginning had and exercised political leadership; that he is the only visible means of escape from a legis-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lative chaos; and that it is to the interest of good government that the speaker exercise the responsibility which has gradually come upon him," declares that he himself is convinced by the voluminous and carefully sifted evidence which she presents, "that the speaker's present status is a natural, normal and inevitable development of our system of government, and promises good and not evil."

The earlier sections of Miss Follett's first chapter, on the "Genesis of the Speaker's Power," give in brief outline an interesting account of the speakership of the House of Commons, from its first appearance late in the fourteenth century until the beginning in the eighteenth of that final stage of development which has transformed the incumbent of this office from a cringing servant of the crown into the dignified, independent, impartial and greatly respected speaker of to-day. Of equal interest is the account, in the later sections of the same chapter, of the development of the speakership in America during the colonial and revolutionary periods. Here, in the course of the eventful seventeenth and eighteenth centuries, the office became, through the acquisition of political functions, radically different from its English prototype, which was and still is little more than a moderatorship. It is to these political functions, slowly but securely established during the long struggles between colonial assemblies and royal governors, that the author traces the parentage of the most distinctive and, we may add, useful features of our Congressional speakership as now constituted.

The second chapter is on the "Choice of the Speaker." In this the discussion of the principles of choice is suggestive and instructive. Miss Follett holds that parliamentary knowledge and experience and previous service in the House have some weight; that strife for sectional advantage is a factor of considerable importance. But

of much greater influence than any sectional claims . . . are the many private schemes of individuals and corporations. Men with special interests to be advanced, or those anxious to obtain government subsidies in aid of some commercial enterprise, take an active part in the election of the man from whom they hope to get the most assistance. A very important factor in the speaker's election is his personal popularity. . . . The speaker, moreover, must be a man whom his party can unreservedly trust; . . . who will so organize the House, regardless of all personal interests and private feelings, that it shall act in harmony with the party. . . . New men come to Washington, some anxious for promotion and fame, many with high motives, . . . yet for an opportunity to show their capacity for public usefulness and to gain national distinction, they are wholly dependent upon the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

good sense, justice and good-will of the speaker; a candidate, therefore, who has these qualities in a large degree, will be likely to gain their support. . . . The prospect of places on committees of course influences many votes. . . . Another important factor in the speaker's election is the relative probability of success. . . . The motives, however, which have by far the most influence . . . are purely political. . . . Each member asks himself in regard to the various candidates, "Will this man constitute the committees as I wish, and will he allow the bills which I favor to be brought in?

The discussion of the principles of choice is followed by a clear, but perhaps too condensed, account of the contested elections in 1839, 1849, 1855 and 1859.

In the third chapter — to the general reader perhaps the most attractive of all — we have a brief account of each speakership from 1789 to 1895. In the course of the narrative it becomes evident that the growth of the speaker's power has been hastened and, in a considerable degree, its peculiar forms determined by the stronger men, such as Clay, Blaine, Carlisle and Reed, who have held the speakership.

Chapters IV to VII are devoted to a study of the parliamentary, as distinguished from the political, powers and duties of the speaker. In the fifth chapter Miss Follett shows that the speaker's vote "is not only more than a casting-vote, but . . . something quite different." "The speaker of the House of Commons gets his right to vote through his position as speaker; the speaker of the House of Representatives through his position as a member of the assembly." She shows that by the rules the speaker is obliged to vote "to break a tie, to make a tie, to complete a two-thirds vote and, when his vote is necessary, to make a quorum"; while some speakers have claimed and at times have actually exercised the right to vote on any pending question, "this claim rests upon the lack of prohibition."

After showing in the sixth chapter that the rights and duties of the speaker in respect to the "Maintenance of Order" are not greatly different from those belonging to the moderators of similar legislative assemblies, Miss Follett takes up in the next chapter the subject of "Dealing with Obstruction.":

> Representative institutions rest on the principle of government by majorities, but they should include also the protection of the minority. . . . Of late years the minority has carried the protection afforded it by the rules beyond all legitimate use to an attempt to thwart the legislation of a responsible majority. The methods of obstruction are many, but the two principal devices are: breaking a quorum by refusing to vote, and interposing dilatory motions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This statement of the situation is followed by a fair and full account of the way in which, under the bold leadership of Mr. Reed, the speaker has acquired the powers which enable him to keep obstruction within convenient limits. It is no longer possible for those who are present to break a quorum by refusing to vote; dilatory motions are of no avail, since the speaker need not recognize them. The victory and its usefulness are indisputable, but the victory has been purchased at considerable cost; Anglo-Saxons have been loath to allow to any presiding officers the power to make absolutely final decisions binding upon the house. And it is true that in conjunction with the enormous influence which the speaker already possesses, it is a power which might be abused. Its justification lies in the absolute necessity that some one assure to the House the opportunity for the proper discharge of its functions.

Chapters VIII, IX and X, entitled respectively, "Power through the Committee System," "Power through Recognition" and "Power as a Political Leader," treat in an effective way of the increasingly important aspects of the speakership as a political institution. The foundation of the speaker's political power is the right conferred by the first Congress to appoint the committees of the House. This right has come to include the right to appoint to the chairmanships. The principles which guide the speaker in the discharge of this function, as generally understood, are "the interests of his party." But "since the speaker always owes his election to the dominant faction of his own party, he naturally gives to that faction the preference in the construction of the committees." The author makes in this connection a statement which is calculated to astonish if not alarm.

> Lately, moreover, there has grown up the theory, among the speakers at least, that the chair has the right to have and to pursue a policy of its own; so that recent occupants of the office have been known to accomplish their ends in direct opposition to what has seemed . . . the predominant opinions of their party.

It is, however, his "power through recognition" that exhibits the control of the speaker over legislation in its most personal and, to many, most disquieting, not to say offensive, form. The way in which this power is sometimes exercised is not consistent with the respect due to a Congressman and to the constituency which he represents. Even Miss Follett, who would not lessen the prerogatives of the speaker, admits that "the subject of recognition is one of the most difficult to adjust in the whole legislative system."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The tenth chapter opens with the assertion that "the speaker of the House of Representatives is the acknowledged leader of his party in the House." In earlier times he was but one of the leaders and often not the foremost. To-day he stands distinctly at the head. Moreover, he shows at least a tendency to aspire to do more than merely embody the will of his party in national legislation; he would become a real premier and devise the policy of his party. The chapter points out the opportunities for leadership not hitherto considered which the speaker now enjoys, the most important of which is that which comes to him as chairman of the committee on rules.

The final chapter is on "The Speaker's Place in our Political System." This contains a summary of the powers of the speaker, a view of their origin and the causes of their development, and a frank confession that the speaker is not, but should be, responsible: "The one thing in the present position of the speaker which is much to be regretted, and which will always tend to produce evil results until remedied, is the possession of such important prerogatives without definite responsibility." The chapter proceeds with a discussion of this important question of the responsibility of "the speaker as the head of the legislative department" and as an executive officer, and closes with "a plea for a better adjustment."

The six useful appendices which follow include a "Bibliography of the Speakership" and the rules of the House of Representatives. The table of contents and index are ample and well made. Throughout the book numerous footnotes acquaint the reader with the sources studied and the authorities consulted.

The foregoing analysis of Miss Follett's work, although brief, makes extended comment unnecessary. The importance of the theme is not open to question. That the treatment is of rare excellence will be conceded by every thoughtful reader. In few recent works belonging to the field of politics and history do we find so much evidence of the conditions which are essential to the making of a good book — a well-chosen theme, grasp of subject, mastery of material, patient, long-continued, wisely directed labor, good sense and good taste.

There are two respects in which the book seems to me defective. In the first place, I do not think that Miss Follett has presented with adequate fullness the evils which result directly from the centralization of so great powers in the hands of the speaker. She does not overstate the extent of this centralization in saying that "Congress no longer exercises its lawful function of law-making; . . . it is not

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

even the maker of the legislative power; it is but the maker of the real maker, the speaker of the House of Representatives." This means a degradation not only of the Congressman, but also of the constituency that he represents, and therefore of the people of the United States. The House of Representatives has ceased to be a place where a man can be sure of an opportunity for public service at all commensurate with his zeal and capacity. It has become a place where such opportunities are no longer rights, but favors, bestowed partly on personal and partly on party considerations. The ascendency of the speaker resembles in too many of its aspects the ascendency of the party boss. Moreover, Congress is a school of politics for the whole country; and the spirit and methods which prevail there are reproduced more or less fully and rapidly all over the Union. The author's conclusion that this centralization is necessary and salutary may be well grounded; but it is prudent not to overlook its cost.

The book seems also to scant another important feature of its general theme — the relationship of the development of the speakership to the development of party government. It can scarcely be doubted that the two are organically related. But the wonder is that in a region so new the author should have succeeded in exploring so far and so well. She has placed every student of politics and political history under heavy obligations.

AMHERST COLLEGE. A. D. MORSE.

*État Fédéral et Confédération d'États.* Par LOUIS LE FUR, Docteur en Droit. Paris, Marchal et Billard, 1896. — xvii, 839 pp.

In the first three hundred and fifty pages of this book the author gathers the material of which he is to make use further on. All of the confederations and federal states which have ever existed are described. The reader finds here an account of the Greek confederations, of the Republic of the United Netherlands, of the Germanic Confederation and the German Empire, of the Swiss Confederation before and after 1848, of the United States, of the federal republics of South America and also of the Dominion of Canada. Such a summary is very convenient, if well done, as it is in this case. The author shows ample and accurate knowledge, and he has the French gift of lucid exposition.

The theoretical or critical, as distinguished from the historical, part of his work, the author begins by a discussion of sovereignty, which he justly regards as distinguishing the state from all lower forms of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

political organization. This view leaves no room for the category of non-sovereign states. The various theories that have been advanced in order to avoid this conclusion, including the divisibility of sovereignty, are examined and rejected. Present terminology, the author holds, is the result of historical traditions. The provinces of a decentralized simple state are in some instances not a whit behind the members of a federal union, either in the strength of local patriotism or in the extent of their authority. The pages devoted to this topic are well worthy of perusal.

When M. Le Fur comes to discuss the nature of sovereignty he is clearly hampered by the eighteenth-century conception of natural law, as something outside of and above the state, and imposing obligations upon it. He insists that the superlative is a relative term and that even the state is subject to law. Every one admits that the state, like every other earthly thing, is subject to limitations. It cannot, for instance, disregard economic laws without suffering the penalty. But if it does disregard them, its subjects are nevertheless bound by its commands. The law by which the French Convention fixed the price of commodities was in violation of sound economic principles, but it did not for that reason transcend the competence of the state. To hold otherwise is to introduce into a discussion of legal questions considerations that belong to a different category.

This confusion of thought avenges itself later in a curious manner. The author affirms that the indivisibility of sovereignty is to be inferred, not from the nature of sovereignty, but from the unity of the state. This, however, is a distinction without a difference; for how long would the state remain one were it not at the same time sovereign? The state could not be sovereign were it not one, nor one were it not sovereign. The same misconception mars the chapter dealing with the origin of the federal state. While giving a fair and lucid account of Jellinek's position, the author yet maintains that federal states both can be and in some instances are formed by treaty; and then he seeks the authority which compels the observance of the treaty and excludes the right of secession in the natural law, which is above the constitution and above the state itself. Fairness seems to require that in such a case the reviewer should quote the author's words:

> Ce n'est plus en effet de contracts conclus entre individus, et qui par conséquent ont besoin d'être sans cesse renouvelés, qu'il s'agit ici, mais bien de conventions entre collectivités publiques qui ne meurent pas. Et ces conventions sont obligatoires, car les principes du droit s'imposent aux états

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

eux-mêmes; et bien qu'il n'existe pas au-dessus d'eux de pouvoir commun capable de les constraindre par la force à l'exécution de leurs obligations, il n'en sont pas moins tenus en droit d'accomplir celles qu'ils ont contractées.

It is difficult to imagine why the treaties by which a confederation is formed should not have the same sanction; but if so, what becomes of the distinction between the federal state and the confederation, which it is the object of this volume to establish?

Despite such drawbacks, however, the book before us is not without substantial merits. The author has made a thorough study of the literature of the subject, and his analysis of the views of other writers is clear and discriminating. His own criticisms, moreover, are often so pertinent and suggestive as to increase the regret that his standpoint compels him to be untrue to the general trend of his own opinions, and to reject upon fundamental questions the views of writers who have done most to clear up the problem of the nature of the federal state.

RICHARD HUDSON.

UNIVERSITY OF MICHIGAN.

*Éléments de Droit Constitutionnel.* Par A. ESMEIN, Professeur à la Faculté de Droit de Paris, Directeur-Adjoint à l'École Pratique des Hautes-Études. Paris, 1896. — 841 pp.

As in his well-known *Cours Élémentaire d'Histoire du Droit Français*, the author has aimed in this book to "compose a treatise at once elementary and scientific"; and at the outset one may acknowledge the success with which he has performed his difficult task. Throughout the comparative historical method is employed; so that in effect the work, though having as its ultimate object an exposition of the constitutional law of France, is an elaborate treatise on the development of the forms and principles of self-government in the modern state. It is marked by the same care in definition, the same terse epigrammatic diction and the same clear analysis which characterize the author's great work on *Le Mariage en Droit Canonique*. Moreover, one is struck by his intimate acquaintance with the literature of his subject, particularly that which relates to the constitutional history of Germany, England and the United States.

Besides an introduction of twenty-three pages, the book is divided into two parts. The first part deals with "Modern Liberty, its Principles and Institutions"; and the second, with "The Constitutional Law of the French Republic."

In the introduction, by a series of definitions, the essential

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

analysis of the entire treatise is developed. Constitutional law is declared to be "the fundamental part of public law," all whose "other branches presuppose its existence," as indeed does private law "when the latter appears in written form." Constitutional law has three objects. "It determines (1) the form of the state; (2) the form and organs of government; (3) the limits of the rights of the state." Each of these three objects is defined and discussed in the order named. "The state is the juridical personification of a nation; it is the subject and the support of public authority;" while that which in law constitutes a nation is "the existence in that society of men of an authority superior to the individual wills." This authority, which in its sphere recognizes no "superior or concurrent power, is called the sovereignty." It has two aspects: "the interior sovereignty, or the right to command all the citizens composing the nation, and even all residents of the territory; and the exterior sovereignty, or the right to represent the nation and to bind it in its relations with other nations." With respect to form, the "constitution of the interior sovereignty," states are distinguished on the one hand as "simple and mixed"; on the other, as "unitary and federative."

Much confusion, he continues, arises through the diverse senses in which the word "government" is employed by writers on constitutional law. First, it is not to be confounded with "sovereignty." In the "proper and general sense," government "designates the exercise of public authority by the sovereign; c'est la souveraineté mise en œuvre." Again, it is a common fault to use government in the restricted "sense of the executive power and its immediate organs." This error owes its origin to two facts. In the first place, just as the legislative power is the "veritable regulator of the sovereignty," though distinct from it, so it is mainly through the executive that the action of the government is brought home to the citizen. Secondly, it is due to the powerful influence of Rousseau, in whose language "sovereign" is synonymous with the "legislative," and "government" with the "executive" power. This confusion makes it all the more difficult to distinguish clearly the "government" from the "administration"; and the difficulty is complicated by the fact that often, as in the French law, the organs of the government, properly so called, act as the organs of the administration. Yet, in reality, the two conceptions are quite distinct. Revolution may often change the form of the government without essentially affecting the administration: "je dirai que le moteur était changé mais que la machine n'en continuait pas moins sa marche régulière."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The first part of Professor Esmein's work is of special interest to the student of institutional history. The author has set himself the task of searching out and interpreting "the juridical theory of the fundamental institutions and superior principles which in the nineteenth century figure in the constitutional law of the West." These institutions and principles are traced to two sources, each treated under a separate "title." The first title deals with the influence of the English constitution on modern institutional forms and ideas. The author does not here attempt a systematic history of the English constitution, but rather seeks for those "institution-types" which it has contributed to the law of free peoples and particularly to that of France. With clear insight, much learning and a firm grasp on the details of his subject, he shows in five chapters how the English constitution has become one of the elements of modern liberty. Then he discusses the origin and character of representative government, the bicameral system, the responsibility of ministers and the parliamentary or cabinet system of government. In making known to France and to Europe in general the principles of English constitutional liberty, the influence of Montesquieu, de Lolme and Blackstone is especially emphasized. Under the second title of this first part, also in five chapters, are considered the principles developed through the philosophy of the eighteenth century and proclaimed by the French revolution. Rousseau's theories are carefully analyzed, and the modern history of the law of nature is traced from the writers of the twelfth century onward. The origin of the theory of national sovereignty, of the separation of governmental powers, of the rights of the individual and the theory of the written constitution are successively treated; and this part of the book, aside from its proper scientific purpose, constitutes a most important contribution toward understanding the forces which produced the French Revolution.

The second part, dealing with the constitutional law of the French Republic, cannot here receive the notice which it deserves. It is a very clear and able exposition of the French system of parliamentary government. No better manual for university or even for popular use exists. Indeed M. Esmein, when due allowance is made for the narrower field and the more scientific and technical aim of his book, has rendered us a service for France comparable to that of Mr. Bryce for the sister republic. It is earnestly to be hoped that the *Droit Constitutionnel* will speedily find an English translator.

GEORGE ELLIOTT HOWARD.

STANFORD UNIVERSITY.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*The Recollections of Alexis de Tocqueville.* Edited by the COMTE DE TOCQUEVILLE, and now first translated into English by Alexander Teixeira de Mattos. New York, The Macmillan Co., 1896. — xiv, 409 pp.

During the last troubled century of her history France has produced many politicians who have posed as philosophers, and a few philosophers who have mingled in politics. De Tocqueville is a conspicuous example of the latter class. For over ten years he played a part in the Chamber of Deputies, and conformed externally to the accepted canons of the politician's life. But for all that he was no politician. The motives which guided his official actions were not those of his colleagues. He was above all the man of observation and reflection. While Thiers and Guizot employed either directly or indirectly all the tricks of the politician's trade to attain the politician's end — power, de Tocqueville, watching with some disdain the methods of those about him, found his most congenial employment in maintaining a connection between his party's policy and the fundamental principles for which the party stood. Among the most skillful of the phrase-makers, whose gift is so potent in French politics, he was distinguished from the rest by attaching more importance to the substance than to the form of his phrases. He understood the tendency of the French public to take what he calls the "man-of-letters' view of politics," which consists in

> seeking for what is novel and ingenious rather than for what is true; in preferring the showy to the useful; in showing one's self very sensible to the playing and elocution of the actors, without regard to the results of the play; and . . . in judging by impressions rather than reasons [p. 88].

Against this tendency, de Tocqueville felt strongly the necessity of unceasing strife.

The "recollections" embodied in the work before us cover the personal experiences of the author from February to June, 1848, and from June to October, 1849. By a happy chance, the philosophical student of democracy in its most peaceful aspect was able to observe from the center the phenomena of democracy in cyclonic development. The result of the observation, committed to writing two years after the fact, combines the vividness of the first impression with the sobriety of the matured judgment upon the events. In respect to the actual happenings of February and June, 1848, de Tocqueville's detailed account serves only to strip off the few remaining shreds of "glory" from many very commonplace incidents that have been dis-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

guised by them. It is in his judgments of leading men concerned in the affairs of the day, and in his reflections upon the general character of politics, that the author's work is most fascinating.

Few of the leading politicians of the time emerge intact from the philosopher's crucible. Thiers's weaknesses are made particularly prominent. In the presence of the trouble which his own political course had precipitated, he is shown to have lost his head entirely; and when the socialists rose in Paris in June, 1848, he was prompt to urge the abandonment of the city (pp. 202, 203) — the expedient which, when adopted under similar circumstances, and largely through his influence, in 1871, led to the most disastrous consequences. Lamartine appears in these pages as endowed with much greater physical courage than Thiers, as well as with a higher degree of moral stamina and political insight. Ledru-Rollin, who loomed so large and terrible in the excited imagination of many of his contemporaries, is dismissed with contempt as a

> sensual and sanguine heavy fellow, quite without principles and almost without brains, . . . free from malice . . . and incapable of cutting the throats of any one of his adversaries, except, perhaps, for the sake of historical reminiscences or to accommodate his friends [p. 151].

The almost uniformly unfavorable judgment of de Tocqueville on the conspicuous men of the day is doubtless attributable at bottom to the fact that they, as practical politicians, could not be adjusted to the philosophical formulas which were the unconscious foundation of the critic's thought.

The general reflections on politics with which the narrative of particular events is interspersed are of the same striking character that made the author's reputation in his first great work. The theme upon which most of them depend is democracy and revolution as illustrated by France. The February Revolution, he claims, sprang from "general causes impregnated with accidents"; and this is true of all like transactions. Neither a fatalistic succession of general causes, which "suppress men from the history of the human race," nor a chapter of accidents, nor a suddenly improvised stroke of genius or audacity in any popular leader, embodies the complete explanation of any great political upheaval. M. de Tocqueville claims that he foresaw *a* revolution, but he concedes that *the* revolution took him by surprise; and he denies that anything more than this can be claimed by any of his contemporaries, whether conservative or radical.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The events of February were recognized at once as having terminated the rule of the *bourgeoisie*, and de Tocqueville comments with ill-concealed malice on the anxiety with which this class sought to ingratiate itself with the masses. A plebeian ancestor now became a prize to every family, who "took as great pains to make a display of [him] as, not long before, they would have taken to conceal his existence." But it was the socialistic, as distinct from the purely republican, element in the revolution that gave the event its peculiar significance. De Tocqueville easily detects the cause of the socialists' failure to control France as the extremists had done in the first revolution. The country people, who in 1789 had everything to gain by the projects of the Parisian leaders, in 1848 had everything to lose. The abolition of property rights in 1848 would have undone the work of 1789. This is why the whole country population rose *en masse* to support the government against the insurgents of May and June. But de Tocqueville, while rejoicing at the result, is too much of a philosopher to be sure that it is final. His study of the march of revolution through sixty years has made him chary of setting any limit to its progress. All political institutions inconsistent with general equality have been swept away; is it not to be expected that the social institution, private property, which appears to be the only remaining sign of inequality among men, will also be assailed? He puts, but does not answer, the question: "Will socialism remain buried in the disdain with which the socialists of 1848 are so justly covered?" He is clearly in doubt.

> The more I study the former condition of the world, and see the world of our own day in greater detail . . . the more I am tempted to believe that what we call necessary institutions are often no more than institutions to which we have grown accustomed, and that in matters of social constitution the field of possibilities is much more extensive than men living in their various societies are ready to imagine [pp. 100–101].

The last part of the *Recollections* treats of the period when the author was minister of foreign affairs in the Barrot cabinet, at the beginning of Louis Napoleon's presidency. This part was written in 1851, and while in no degree less interesting than the others, it seems to me to be very distinctly impressed with ideas of the time of the writing, and thus to lack faithfulness to those of the time written of. The trail of the *coup d'état* is over it all.

WM. A. DUNNING.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*The Nicaragua Canal and the Monroe Doctrine.* By LINDLEY MILLER KEASBEY. New York, G. P. Putnam's Sons, 1896.—622 pp.

Professor Keasbey has written a book on an interesting and important question. Between North America and South America lies an isthmus, in many places not over thirty miles wide, which divides the Atlantic from the Pacific, and compels ships coming from the east to make the long and perilous journey around Cape Horn in order to reach the Pacific ports. The idea of connecting the two oceans at this isthmus suggests itself naturally, and plans for a canal were formed almost as soon as the shape of the American continent had been ascertained by discoverers. Under Charles V and Philip II plans were made for cutting through the isthmus a water-way, which, after three centuries, still remains unfinished.

Besides giving a full account of these early attempts, Professor Keasbey shows how one European nation after another has tried to obtain control over some part of Central America. Such efforts have not yielded very important results. Spain has lost the position she once held, and the states which now occupy the isthmus are as ill governed as most of their South American sisters. Professor Keasbey, like many others, views with complacency the idea of our assuming a protectorate over this region, in which lives an ignorant and indolent population under shifting despotisms christened by the name of republics. The wisdom of such a step is at least doubtful. The parent who, in addition to caring for his own large family, insists on assuming responsibility for the acts of all the incorrigible good-for-nothings who live in the neighborhood, may be philanthropic, but he is not well advised.

Great as are the difficulties which attend the construction of a canal through the isthmus, no one can doubt that, sooner or later, communication will be opened between the Atlantic and the Pacific. Possibly the cost will be so large that such an undertaking will not prove to be a commercial success, but it will be as important to civilization as the canal of Suez. Professor Keasbey evidently thinks that the question, when the canal will be constructed, is of less importance than the question, by whom it will be constructed. Many will, however, fail to appreciate the importance of having this work done under the supervision of our own government. In times of peace the ships of all nations will use this means of communication; in times of war no rights will be respected except those that are protected by force. From the Suez Canal the English have reaped the greatest advantage; but this is because they have the largest foreign com-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

merce. Since the construction of the canal England has acquired the majority of the stock, but it is hard to see what especial benefit she derives from this; no more English ships pass through the canal because the English government is the largest stockholder. If the possession of a canal in Nicaragua or Panama were important to us in time of war, we could hold it only while we had more ships and stronger ships than our enemy. To suppose that, in case of war with England, a British fleet of ironclads would despondently turn away from a canal guarded by some stray American gunboats, because it had been constructed with American capital or was under the protection of the American government, shows a lack of familiarity with the usages of warfare.

Whether the canal is built by a future de Lesseps or a future Warner Miller, this country will reap the greatest advantage from its construction. Professor Keasbey gives a full account of the long record of failure in the past; but, notwithstanding this, he is justly confident that in the present condition of science and commercial development the completion of a canal will not be long postponed. The work done at Panama has been the only serious attempt at construction, and the failure of that undertaking need not discourage other projectors. Over two hundred and fifty million dollars were spent there, and the canal is far from completion; but as one-third of the amount was stolen, one-third was wasted and only one-third was spent on the work, this does not show that the cost of cutting through the isthmus will necessarily reach an impossible sum. The account of the Panama scheme and of the manipulations, not to say the machinations, of de Lesseps is the most interesting chapter in this book. A few errors have been allowed to creep in, and de Lesseps is made to say that American opposition was due to envy of "la gloire Français." The great projector was often wrong in his engineering, and still more often wrong in his facts, but his French was always correct.

JAMES BRECK PERKINS.

ROCHESTER, N. Y.

*William Henry Seward.* By THORNTON KIRKLAND LOTHROP. (American Statesmen Series.) Boston and New York, Houghton, Mifflin & Co., 1896. — 436 pp.

The present work should be judged by the purpose with which it was written. It exhibits in a compact and somewhat popular form the life of the person of whom it treats, and his relations to the times

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in which he lived. To this mode of treatment the life of Seward does not readily yield. As the result of a certain vivacity and resourcefulness of temper, his name is associated with questions rather than identified with them; and the number of important events with which he was connected is so considerable, and the precise part he played in some of them is as yet so indeterminate, that his career invites investigation and discussion rather than narration. The present work does not attempt to clear up doubtful questions by new evidence. On the other hand, it presents a fair summary of that which has already been disclosed.

The fact that Mr. Seward was, as Mr. Lothrop states, "charged with having no political convictions," is due to the combination of traits that caused him at times to propose courses of action which seemed to others to be irrational. There were occasions on which he exhibited impulsiveness and lack of self-restraint. An example of this may be found in his memorandum to President Lincoln of April 1, 1861, in which he suggested a probable declaration of war against two European powers, a possible declaration against two more, and the rousing in Canada, Mexico and Central America of "a vigorous continental spirit of independence" against "European intervention," as a remedy for the political ills of the United States. It would be difficult to believe that such advice was given seriously, if there had been any object to gain by a lack of seriousness. But there was none.

Mr. Seward held the office of secretary of state through eight long and eventful years, and he was required to deal with many difficult questions. It would be impossible, in the limits of a review, to discuss his career in that office. That on many occasions he exhibited great skill is generally conceded. His industry was remarkable; and it is curiously attested by hundreds of memoranda written hurriedly in pencil across the face of dispatches, showing to how great an extent he personally directed the work of his department. Mr. Lothrop states that he remained in the cabinet after President Lincoln's death, "not so much to take part in the process of reconstruction as because he wished to dispose of the diplomatic questions which the war had left unsettled, and thus to finish his work." In this opinion I am inclined to concur. It doubtless was the wish to which Mr. Lothrop has adverted that led him, in 1868, to undertake the settlement of the Alabama claims. Mr. Lothrop goes very far, however, in saying that the Johnson-Clarendon convention "gave to the United States, in substance, all that it got by the Treaty of Wash-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ington." The Johnson-Clarendon convention and the Treaty of Washington were very different instruments, not in form only, but also in substance. They were about as unlike as two treaties of arbitration could be.

J. B. MOORE.

*Harvard Historical Studies.* Vol. I: The Suppression of the African Slave-Trade to the United States of America. By W. E. BURGHARDT DU BOIS, Ph.D., 335 pp. Vol. II: The Contest over the Ratification of the Federal Constitution in the State of Massachusetts. By SAMUEL BANNISTER HARDING, A.M., 194 pp. Vol. III: A Critical Study of Nullification in South Carolina. By DAVID FRANKLIN HOUSTON, A.M., ix, 169 pp.—New York, Longmans, Green & Co., 1896.

The series of historical monographs, of which these volumes are the first installment, appears in unusually attractive form. The publishers, so far as their art could go, have left little to be desired. The plan of the series is also very comprehensive. It will include studies in European as well as American history, besides collections of documents, reprints and bibliographies. An enterprise planned and conducted as this promises to be, must be widely useful in making accessible material for history and in furnishing an avenue for the publication of thorough studies on special topics.

The volume of Mr. Du Bois on the *Suppression of the Slave-Trade* fittingly introduces the series, and in a way indicates what the character of the monographic material in it is likely to be. The volume is a thorough and painstaking study of the efforts made by the American colonies, and by the commonwealths and federal government subsequent to the Revolution, to restrict or abolish the traffic in slaves, of the obstacles which these efforts met with and of their failure until the traffic was swept away in the war which had as one of its results the abolition of slavery itself. The material is well arranged and clearly set forth. Statements throughout are carefully fortified by the citation of authorities. By treating the colonies under the classes of planting, farming and trading colonies, the economic cause of the origin of slavery and of the persistence of the slave-trade in the South is sufficiently indicated. At the same time the reason why the restrictive legislation of those colonies and the humanitarian enthusiasm of the early Revolution were not strong enough to stop the trade is clearly shown. The history of the compromise of 1787, by which for twenty years the control of the traffic was left almost

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exclusively to the states, is plainly stated. The failure of the federal law of 1807 is attributed to the inadequate penalties provided for its violation, to the provision contained in it that the states might dispose of illegally imported negroes and to the general indifference about its execution. Objections to the exercise of the right of search by England, which in part had a natural historical origin, prevented coöperation with foreign powers in the suppression of the traffic. The author also shows the remarkable extent to which the merchants of the Northern states were interested in the trade. Finally, the great increase in the production of cotton after 1820 so strengthened the demand for slaves in the South that the legal barriers were shown to be altogether too weak to check their importation. For a long period before the Civil War the laws against the traffic were systematically violated. Not the least valuable material in the volume is the conspectus of colonial, state and federal legislation against the slave-trade contained in the appendices.

The second monograph, by Mr. S. B. Harding, contains discursive material on the *Contest over the Ratification of the Federal Constitution in Massachusetts*. The study cannot be called a systematic work, nor does it present any especially skillful organization of material. On the contrary, it seems very possible that the character and plan of the volume were largely dependent on the nature of the working material and its accessibility. Considerable contemporaneous matter in the form of pamphlets and newspaper articles has been utilized. Some use, although apparently not exhaustive, has been made of the Massachusetts Archives; and much dependence has been placed upon numerous local histories for aid which in many instances could very probably have been found in manuscript and in more complete form. Possibly the most important service of the monograph is the reprinting from the *Hampshire Chronicle* of a suggestive letter by "Cornelius," and from the *Massachusetts Centinel* of eight letters by "A Federalist Republican."

Of the six chapters in Mr. Harding's volume, the first indicates the development of the extreme self-confidence of the lower classes of the population when disposing of political affairs, and the appearance of sharp lines of cleavage between the classes of the people, both as to social arrangements and as to economic relations and political divisions. The second chapter presents the material directed against the constitution, both in the press and in personal letters. The third chapter relates the action of the General Court in calling the state convention, and the action, controversial or other, taken thereon by

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fewer than a score of towns. The succeeding portions discuss the opposition to the constitution in the convention, the ratification of the document and its reception. The analysis of situations is not in all cases strong, and the relative prominence given to certain towns and individuals, presumably as types, is apt, unless qualified, to be misleading.

The third monograph in this series, by Professor Houston, is a straightforward and unpretentious discussion of the development of theories of nullification in South Carolina. The author's "aim is principally to look at the movement from within, to trace its origin and development inside the boundaries of South Carolina and to discuss the validity of the leading doctrine in the light of the precedents on which the nullifiers mainly relied and of South Carolina's earlier history." The latter purpose resolves itself largely into a process of turning back upon the South Carolinians of the later twenties the words and acts of their fellows during the first two decades of the century. The contrast thus revealed may be explained on grounds of expediency, of local political and economic interest and of real statesmanship; but recognition must be given to a revolution of attitude, in which the year 1816 is fixed upon as

> the beginning of the end. . . . One form of statement might be that it marks the time when South Carolina erased from her program liberality, breadth of view and unselfishness, and wrote in their place niggardliness, narrowness and selfishness; when she began to turn from union towards separation. From another point of view, it marks the time when, not South Carolina, but the other sections of the country which had secured control of affairs, changed their policy from a broad to a sectional one. From a third and higher standpoint, it marks the time when the less admirable qualities of both sections became conspicuous in a struggle for what each section believed, or appeared to itself to believe, was for its own interest, and also for that of the country at large [pp. 5, 6].

The author's purpose or method tends also to throw into prominence the problem of adjusting relations between expediency and consistency, and it gives occasion for what to some will seem like the belittling of Calhoun. An instance of that history-writing which has persisted in making Calhoun the embodiment of nullification is made the text for an elaborate criticism of that theory. On this subject Professor Houston's work marks a clear advance over most historians of the period. Careful treatment, naturally, is given to the development of Calhoun's views and to his connection with

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the nullification movement; but it is insisted that "his change followed that of the majority of the people of the state; and whatever pressure there was, was exerted by the state on him, not by him on the state" (p. 60). This view of his relation to the state is thus reiterated: "It would be much nearer the truth to say that South Carolina coerced Calhoun, than to say that Calhoun misguided South Carolina" (p. 64).

The author's belief that Calhoun figured in the controversy "as an expounder, and as little else," makes natural and necessary the inclusion, as of importance to the narrative, of the work of such men as George McDuffie, Dr. Thomas Cooper, William Drayton and James Petigru, and of such material as the "Sidney" papers and Turnbull's "Crisis." Without such elements the history of nullification could not be attempted.

A third — and perhaps the most significant — feature in the author's work is the importance attached to the economic situation, and the manner in which that side of the development is portrayed. This is in striking contrast to those portions of the work which treat of the purely political aspects of the subject. There is much in the latter that is now the merest commonplace; for example, the conclusion "that the issue of the controversy was decidedly a victory for the general government, at least so far as principles are concerned" (p. 134). Yet even on this side of the work certain portions, especially in the chapters on "South Carolina's Change of Attitude" and on "Formulas of Nullification," are very suggestive.

With reference to one of the leaders it is remarked: "It would be tedious to follow McDuffie through the elaborate and ingenious argument in which he undertook to sustain his position" (p. 39). So also with reference to the various types of nullification theory, it is said to be impossible "to describe the forms the doctrine was made to assume by its different expounders" (p. 79). Nevertheless the reader should willingly consent to such tediousness, and the author might doubtless have overcome, in large measure, the impossibility of adequate description. Satisfaction and completeness on such points may justly be expected, unless the aim is to subordinate the scholarly to the popular. Such limitation is especially unfortunate with reference to the form and history of the Replevin Act.

Certain references are either vague or incomplete, as on pages 57, 110, 111; while "Benson," for Benton (p. 95), merely emphasizes the general care shown in putting the works of the series through the press. Eighteen pages are devoted to seven appendixes, including a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

letter of Calhoun to Robert S. Garnet, first published in 1893. The usefulness of the index is impaired by the omission from it, contrary to the practice in Mr. Harding's volume, of material in the notes.

COLUMBIA UNIVERSITY. HARRY A. CUSHING.

*The Indian Village Community.* By B. H. BADEN-POWELL, M.A., C.I.E. London, New York and Bombay, Longmans, Green & Co., 1896. — xvi, 445 pp.

Students of the village community now have to reckon with an important series of books, bearing more or less directly upon their subject, that will doubtless lead to no little revision of theories regarding the status and land tenure of primitive peoples. Dr. Meitzen,[1] Professor Maitland[2] and, in the work here reviewed, Mr. Baden-Powell have recently discussed the evidence for Germany, England and India respectively, and have presented extremely important conclusions thereon.

The Indian evidence has long needed an investigator; and Mr. Baden-Powell is the first to furnish anything like an adequate presentation of the subject, and to give a systematic account of the village in India in all its forms and variations.[3] He has entered on his task with a full appreciation of the nature of the problems before him, with a desire to set before English readers the collected evidence regarding the details of the villages, and with the unconcealed purpose of correcting the theories of older writers — especially those of Sir Henry Maine and his followers — which were based on a wholly inadequate knowledge of the subject. As an Indian official, Mr. Baden-Powell has the advantage of being familiar at first hand with his subject; and as a student of comparative institutions, of being able to bring his evidence into line with the evidence from other countries. It is the more unfortunate, therefore, that his work, admirable as it is in many respects, should be disfigured by distinct defects of construction and presentation.

After an introductory chapter upon the village and its forms in general — in which we are introduced to conclusions before the evidence is presented — Mr. Baden-Powell begins his examination

[1] Siedelung und Agrarwesen der Westgermanen und Ostgermanen, der Kelten, Römer, Finnen und Slaven (1895).

[2] Domesday Book and Beyond: Three Essays in Early English History (1897).

[3] Mr. Baden-Powell has already presented portions of the evidence in two earlier works: The Land Systems of British India (1892); and A Short Account of the Land Revenue Administration in India (1894).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

proper with a study of the physical and geographical conditions of India, in order to discover how far the local economy of the country has been influenced by natural causes. He finds that physical conditions have influenced to a very considerable degree the form of local organization and the character of agricultural customs; that hill ranges are unfavorable to settlement in villages; that the necessities of jungle-clearing, of water supply and of defense against enemies have compelled compact organization; that climatic conditions have prevented tribal coaration; that the constant need of irrigation has made a shifting cultivation impossible; and that the labor of clearing the soil has prevented the employment of the open-field system. Turning to the ethnographic conditions, he devotes a chapter to the Aryan conquest, and then passes in review the customs of the non-Aryans, Tibeto-Burmans, Kolarians and Dravidians, who, he thinks, had a good deal to do with the building up of the existing village land customs. Returning to the Aryans he examines their agricultural ideas and practices. He agrees with Sir W. Hunter that throughout five-sixths of India the actual work of tillage remained in the hands of non-Aryan or Sudra races; considers that Aryan landholding had a natural tendency to the landlord form; and believes that the Aryans conceived of no special form of village as such, though they probably formed villages where the conditions were favorable, and took the lordship of villages already established.

After thus clearing the ground, Mr. Baden-Powell shifts his point of view, and studies the village in its relation to the tribe and the clan, furnishing us in this particular with one of the most valuable and interesting chapters in the book. It is evident that a great deal of material exists in India which may be of no little value in helping to elucidate the problem of the tribal origin of the village, which in the West has thus far, owing to the want of evidence, eluded the efforts of scholars. This material concerns the structure of the tribe and the clan, the relation of the clan to the village, the division of lands among the members of the clans and subclans, the landed rights of the tribesmen and a host of minor agricultural customs.[1] We are

[1] Such as the desire to obtain equality, pp. 132, 180, 244, 255, 271, 275, 283; exchange of holdings, 180, 252, 255, 257, 262, 375–378; casting of lots, 253, 280, 325; "ploughland," as the amount necessary for family support, 271, 275, 278, 308, 324–325; measuring fields with a "staff of reed," 190; balks, 190; linces (terracing of hillsides), 51. Some of these customs, as the references show, are noted in other chapters. It may not be without interest to mention here the custom of *hamsāya* — the admission of non-tribesmen — among the Pathān and Bilūchi tribes, pp. 245, 246.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

frequently reminded of Mr. Seebohm's study of the tribal system in Wales, and wish over and over again that our author had elaborated this part of his subject and had devoted to it a much larger portion of his book.

The first conclusion drawn from the evidence is that in India there exists no single dominant form of the village to furnish a general typical description, such as Sir Henry Maine gave. Two forms appear. One, the *raiyatwāri* village, contains no trace of common or even of joint tenure, but in it the several portions were allotted or taken up severally. Villages of this type prevail everywhere among the non-Aryans, where Aryan conquest and overlordship have not transformed them into large landlord estates and co-shared villages, and are in every case traceable to a tribal or clan origin. The other, which Mr. Baden-Powell calls the "joint village," is found not in one simple type, as is the case with the *raiyatwāri* village, but in many variations (eight are noted on pp. 348–350) the chief characteristic of which is a joint tenure — a co-sharing of the land by a body of owners, though the land may or may not be actually partitioned. The *raiyatwāri* village Mr. Baden-Powell declares to be the older, looking back to a period when the "joint village" had not come into existence. The latter, he thinks, can be traced to conquest of non-Aryan peoples by Aryans, Jats or Gujars, to settlement by such conquerors in new territory, or to certain other causes that are artificial and not tribal. After his discussion of the tribe and the village, he devotes considerable space to an examination of these artificial causes, which, he says, are four: individual enterprise, rise to local power of individual families, establishment of royal courts and especially grants by the state for religious and secular purposes. Much of what our author tells us regarding the grant of royal rights (pp. 205, 207, 212, 218, 273, 296 ff.) may be profitably compared with what Professor Maitland says on the growth of seigniorial power in early England.[1]

Having thus, in his examination of these two forms of the village, carried us through every part of India, from Panjāb to Madras and from Gujurāt to Assam, — and at times it is a most bewildering journey, — he offers the general and sweeping conclusion that no "communal holding" exists or has existed in India.[2] He recognizes

[1] Domesday Book and Beyond, essay ii, § 5.

[2] The following is Mr. Baden-Powell's definition of communal tenure: "'Common holding' implies that all should join in cultivating as large an area as necessary, and that each should then receive a portion of the harvest suitable to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"collective right," but not joint ownership; and declares that even where there exists joint holding and collective responsibility, the whole area is often held in household severalty. Even the joint form of tenure he regards as a late development; for, as above noted, he refers the origin of the *raiyatwāri* village, in which there is individual ownership, to the pre-Aryan period, when settlement was made in virgin territory, when the obstacles to be overcome were those of nature, not of man, and when title came from clearing and conversion of the jungle "in a manner purely natural." [1]

We welcome the evidence that the author presents and have no fault to find with his main conclusion. He has certainly made good his case against communal ownership of land in India. But have not earlier writers confused the terms "communal" and "collective"? An exact nomenclature is becoming the more essential as the conditions of primitive landholding are becoming the better known. Professor Maitland can find nothing "communal" in the land system of early England; and I for my part, have never been able to see anything "communal" about the land arrangements of the New England towns. Does not this word, so frequently used by writers on primitive institutions, imply a conception of social and economic relations that is utterly foreign to the thought of primitive peoples?

Although of unquestioned value for the facts that it contains, the book before us is open to grave criticism. There is a great deal of evidence, but there is also a great deal too much conjecture and speculation. Many of the minor conclusions are not borne out by the data presented, and I fear that the anthropologist would make short work of some of Mr. Baden-Powell's theories of tribal development. Then, too, the subject-matter — complicated at best — is presented in a manner that only increases the perplexity of the reader. Instead of a series of complete examples, we are given great quantities of evidence gathered without much regard for system from the settlement reports, district manuals, and other sources which are sometimes specified and sometimes not. The style, too, is often obscure, the ideas often lack logical sequence, the same thought is often repeated with unnecessary frequency and much that is immaterial to the main

his wants, without thought of any particular share calculated on any principle whatever, and without thought of the proportions between the amount of sustenance required and the actual amount of labor and capital or the number of cattle contributed to the common task" (p. 409).

[1] P. 398. Mr. Baden-Powell's use of this phrase is unscientific. *Cf.* pp. 233, 236. What "human nature" was in tribal times is one of the things we should very much like to know.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

purpose is thrown in. It is only after careful and thoughtful reading that we make sure of the author's purpose; and at times it is difficult to see the bearings of the material collected. One longs for Mr. Seebohm's clear-cut methods and Dr. Meitzen's beautiful maps. Perhaps in this particular I am doing the author an injustice, for he, too, longs for a Domesday Book or a series of Extenta for India (p. 360); but at least it is not too much to ask that what evidence is available should be presented in a clear, logical and reasonably interesting manner — and this is not the case with Mr. Baden-Powell's book.

CHARLES M. ANDREWS.

BRYN MAWR COLLEGE.

*Die Socialdemokratischen Gewerkschaften in Deutschland seit dem Erlasse des Socialisten-Gesetzes.* Von DR. JOSEF SCHMOELE. Erster, vorbereitender Teil. Jena, G. Fischer, 1896. — xviii, 212 pp.

Much has been written about German socialism in its political aspects; less has been said about the labor movement in Germany solely from the economic point of view. The fact is that Social Democracy has so entirely overshadowed trade-unionism in Germany that even the Germans have given little attention to the investigation of labor organizations proper. In recent years, however, the Social-Democratic labor unions have been extending their activity beyond the sphere of political agitation; many of their leaders have come to realize that the moral and intellectual capacity of the laboring class is improving too slowly to permit any thought of accomplishing the social reformation by political agitation alone. What is even more important, they see that their promise of a golden age is losing its attractive power with workingmen who have been trusting in the fulfillment of this promise for nearly a generation. Hence the Social-Democratic labor unions no longer contemn practical aims and slow progress by means of education and contests with individual employers — a policy which they have in the past repudiated with fine scorn. An instance in point is the conduct of the Social Democrats in the great strike of the white-goods workers in Berlin in the winter of 1896, when they rendered the same practical aid that is given in England by the trade unions. Dr. Schmöle is one of the German scholars who think that Social Democracy is losing its revolutionary character and is assuming something like the attitude of the English trade unions

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

toward the capitalistic class. He finds that the new leaders, like Legien, the president of the association of Social-Democratic *Gewerkschaften*, while nominally holding to the Marxist theory, are nevertheless giving their attention mainly to the building up of labor organizations that shall afford real support to the workingman when he falls in need. And there are many other German scholars who share the belief that the labor movement will in the near future become educational and will make for a peaceful solution of the labor problem.

At present, nevertheless, there exists a wide difference between the Social-Democratic unions and the Hirsch-Duncker unions, which were patterned after the English trade unions. It will be remembered how in 1868 the German Liberals, under the leadership of Dr. Max Hirsch, the exponent of English trade-unionism, attempted to start a similar movement in Germany, and how Schweitzer, Lassalle's successor as president of the General Association of German Workingmen (*Allgemeiner Deutscher Arbeiter Verein*), anticipated the Liberals by winning over the Berlin labor congress of September, 1868. The Hirsch party, however, called another meeting and adopted a trade-union program. Neither form of organization attained immediate prosperity; in 1877 the Hirsch-Duncker *Gewerkvereine* had a membership of less than 20,000, and the Social-Democratic *Gewerkschaften* of about 50,000; while the most recent data available show a membership (1895) of 68,717 and 273,451 respectively.[1]

These figures show the relative economic importance of the two movements. The Hirsch trade unions have already been written up; but a history of the Social-Democratic *Gewerkschaften* from the economic point of view has been lacking, for the reason, already stated, that their activity has been mainly political. Dr. Schmöle, *privat-docent* at the university of Greifswald, contributed the article on the German labor unions (*Gewerkvereine*) to the *Handwörterbuch der Staatswissenschaften*, and has now undertaken a three-volume history of the *Gewerkschaften*. He first sketches the movement of 1868–78, which attained little importance economically but aroused sufficient terror among the politicians to cause the special law of Oct. 23, 1878, which proscribed socialistic organizations, socialistic meetings and socialistic newspapers. Of the twenty-five general organizations (*Verbände*) existing at the time of the passage of the law, sixteen had disappeared before the end of the year, and only four remained in 1883. Mean-

[1] *Cf.* Oldenburg, "Gewerkvereine," in Conrad's Handwörterbuch der Staatswissenschaften, first supplementary volume.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

while a new movement had begun, and it is this which forms the subject proper of Dr. Schmöle's work. The present volume is introductory, and sketches in broad lines the origin and tendencies of the movement; the second volume will describe the development and constitution of various typical unions; and the third volume will discuss the relations between the Social-Democratic and other labor organizations, their extent and their services, and the attitude of society and the law.

Dr. Schmöle shows how the special law of 1878 was evaded, and within five years was interpreted so liberally by the administrative authorities that the Social-Democrats were not hindered in reorganizing societies, so long as they were moderate in the expression of their political views. On the other hand, the judicial decisions, especially in the matter of the insurance laws which regulated friendly societies, were very harsh, frequently depriving the workingmen's societies of the principal object of their existence. The judges are criticised by Dr. Schmöle for their narrowness and bigotry. But if few unions might establish friendly funds, organization could be effected by means of trade societies (*Fachvereine*); and out of these came a "loose" local organization by means of committees of trustees (*Vertrauensmänner*). In these various ways politics were nominally excluded, and the law was evaded. In 1883 the first general organization (*Tischlerverband*) was formed, and was not dissolved by the police. After that, organization went on rapidly. Oldenburg gives the number of members as 100,000 in 1885, and 277,000 in 1890, after the lapse of the law of 1878.

Schmöle is free to admit that the movement is still in an experimental stage, and is ever seeking new purposes and methods; but, as already indicated, he believes that it will lay aside its revolutionary tendencies and become educational. It is to be feared, however, that he has underestimated the difficulties in Germany, where the compulsory insurance law leaves too little opportunity to the laboring men for the management of funds in which they are especially interested.

Dr. Schmöle's treatment is fresh and interesting and, like most of the researches of German students, is based on a comprehensive collection of facts. Those who are interested in the non-political activities of the Social-Democratic organizations will find this a valuable book.

A. F. Weber.

Columbia University.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Die Steuern: Allgemeiner Theil.* Von DR. ALBERT SCHAEFFLE. (Hand- und Lehrbuch der Staatswissenschaften. II. Abtheilung: Finanzwissenschaft. 2. Band.) Leipzig, C. L. Hirschfeld, 1895. —xiv, 420 pp.

*Die Steuern: Besonderer Theil.* Von DR. ALBERT SCHAEFFLE. (Hand- und Lehrbuch der Staatswissenschaften. II. Abtheilung: Finanzwissenschaft. 3. Band.) Leipzig, C. L. Hirschfeld, 1897. —xvi, 663 pp.

Dr. Schäffle has been known to all students of fiscal problems since the appearance in 1880 of his important work on *Die Grundsätze der Steuerpolitik*. Of his other contributions to social and political science it is not necessary to speak, further than to say that in many and varied fields of scientific as well as of political activity he stands among the foremost writers and administrators on the European continent. The two volumes which are here reviewed quite maintain his great reputation: they are exact, incisive, clear and up to date; and for the advanced student they present many points of view worthy of consideration. Yet, when the works are carefully analyzed, it will be found that most of the fundamental ideas are already contained, although, of course, in less systematic form, in the earlier work of 1880; and, to the average Anglo-Saxon reader, the disadvantages of the scheme of devoting two large volumes to the general and the special part of taxation will be more apparent than the advantages. The Germans love to be "*gründlich*" at all costs, and to devote a great deal of space in their scientific treatises to what impresses the practical man as savoring a little of metaphysics; and this we see especially in the general part of Dr. Schäffle's work. Another weakness of the work is inseparable from the method of treatment. The second volume, or special part, really depends, in many of the chief divisions, upon the discussion of the more fundamental problems in the first part. As a consequence we have a considerable amount of repetition. Most readers will therefore find the second volume, which contains in compressed form no inconsiderable portion of the first volume, at once more interesting and more valuable.

In the second volume the most important discussion is that of the classification of taxes, for upon this depends much of the distinctive value of the author's treatment. Dr. Schäffle divides taxes into direct and indirect; but he takes strong exception to the commonly accepted theory that it is only the direct taxes which correspond to the "faculty" of the individual. According to him the indirect taxes accomplish the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

same result, but in a different way. The direct taxes are intended, in his opinion, to reach the general or average taxable capacity of the individual, while the indirect taxes are intended to reach the "actual" or "special" or "individualized" ability. He is able to reach this conclusion, however, only by counting among the indirect taxes, in addition to the ordinary taxes on commodities and exchange, what he calls the *Bereicherungs-steuern*, including the taxes on inheritances, on unearned increment and on lotteries, as well as some others not usually put into that category, like sumptuary taxes or so-called direct expenditure taxes. His whole discussion of indirect taxation thus becomes highly artificial, and by this arbitrary classification loses much of its merit. It is not likely that English or American writers will adopt his classification.

In the general discussion of principles Dr. Schäffle is quite up to date. He lays stress, for instance, on the modern problems connected with double taxation and with the treatment of corporations. To Germans the books will be of value because of the special importance attached to Swiss and American experience. For the average American reader there is still a great deal that is only of very secondary interest; but the advanced student will find in almost every chapter of the two works some new food for thought. They are distinctly able works of an able man.

EDWIN R. A. SELIGMAN.

*Die Persönlichen Steuern vom Einkommen, verbunden mit Ertrags- oder mit Vermögenssteuern.* Mit besonderer Beziehung auf württembergische Verhältnisse. Von FRIEDRICH JULIUS NEUMANN. Tübingen, Verlag der H. Laup'schen Buchhandlung, 1896. — vi, 277 pp.

Professor Neumann's monographs follow one another with surprising rapidity. His work on the reform of local taxation in Saxony had scarcely been published when a new income-tax bill in Würtemberg led him to make an equally careful study of this and related forms of taxation. Where questions of taxation are concerned, he is a believer in special investigations with reference to existing conditions in particular places, as compared with either the deductive or the exclusively historical method.

Beginning with an historical chapter in which he points out a preference for taxes on product in the south and for personal income taxes in the north of Germany, Professor Neumann proceeds next to consider the advantages and disadvantages of the former. The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

chief weaknesses of taxes on product he finds to lie in the conflicting interests of urban and rural producers; in the difficulty of establishing a just scale of progression, exempting a minimum of existence, and making allowance for debts and other personal relations; and in certain loopholes of evasion. Out of these defects of the taxes on product he constructs a negative kind of argument in favor of the general income tax; though he is willing to retain the former for communal purposes, or even for the use of the smaller commonwealths. In local finance he is a champion of the benefit theory of taxation. As the most practicable means of lessening the administrative defects of the income tax and of securing a heavier taxation of funded than of unfunded incomes, he shows the need of levying supplementary taxes either on product or on property; and he points out many defects of property taxes, including their inequalities and practical regressivity, the difficulty of assessment and the disregard of the different degrees of productiveness of capital; nor does he forget to cite American experience as a horrible example. Finally, numerous questions arising in connection with the income tax are considered in much detail. Whether the earnings of wife and children should be exempt; what allowance should be made for necessary living expenses, and especially for house rent; the amount to be exempted; the rates of progression — these are some of the specific problems discussed. The author advocates the deduction of house rent, not only because it is unjust to tax rent which is paid without taxing also that which is saved by home-owners, but also because it is from the incomes of the poor that the greatest proportion must be deducted on this account; and this is shown by sufficient statistics to hold true both in the town and in the country.

MAX WEST.

WASHINGTON, D.C.

*Traité Théorique et Pratique d'Économie Politique.* Par PAUL LEROY-BEAULIEU. Paris, Guillaumin et Cie., 1896. — 4 vols. vii, 793, 652, 694, 810 pp.

The activitity and facility of the accomplished editor of the *Économiste Français* are astounding. Not only does he lecture at the *Collège de France* and at the *École Libre des Sciences Politiques;* not only does he write a weekly article of considerable length in his own journal; not only is he a frequent contributor to the *Revue des Deux Mondes;* not only does he turn out every two or three years a fresh and always noteworthy volume on some phase of economic inquiry —

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

not only does he do all this, but he also finds time amid all these arduous occupations to write a general work of stupendous proportions like the one here reviewed, and to write it in such an attractive way that, notwithstanding its size and cost, it runs through the first edition in less than six months. No one but a Frenchman could accomplish such results; and there are few Frenchmen who could accomplish them as well as M. Leroy-Beaulieu.

Volume I contains the general introduction, treats in a second book of the production of wealth, gives in a third book the general conditions of modern industrial development, such as liberty, private property and competition, and begins the fourth book, on "Distribution," by treating of the law of rent. Volume II discusses agriculture and mining, profits and interest, wages and the labor question. Volume III contains a fifth book on exchange, including value, supply and demand, money and banking. Volume IV completes the treatment of exchange by discussing trade and commerce, takes up consumption in a sixth book, devotes a seventh book to population and emigration, and closes with an eighth book on socialism and taxation. An appendix of 88 pages contains an index.

The new *Theoretical and Practical Treatise on Political Economy* is intended, as the title implies, to appeal to both classes of economic students. The author, however, prides himself on his close acquaintance with facts; and it is indeed primarily from this point of view that the work is attractive. With all his interesting writing, M. Leroy-Beaulieu has never made much claim to advance pure theory; and while we do find in this treatise a welcome given to the work of the Austrian school, with whose main results the author seems to be tolerably familiar, there is no attempt to blend these results with the body of his thought. Even the one point upon which the author especially prides himself — the theory of interest and his prediction of many years' standing as to the fall in the rate of interest — does not seem to be either especially new or particularly striking. To the student of pure theory the treatise will not bring much that is novel or suggestive.

M. Leroy-Beaulieu seems, furthermore, to have had in mind only two classes of readers — those interested in theory and those attached to practice. He has almost wholly neglected those addicted to the historical side of economics. We search almost in vain in his book for the newer points of view that have been so ably presented by the German historical economists and some of their foreign followers. It is especially in the discussion of the social problems that we miss

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

this important element. For aught that we learn from the context the work of the last thirty years outside of France, with the exception of that done by a few English and Austrian writers on theory, has been completely thrown away. The only exception to this apparently general neglect is that the French translation of Roscher is continually mentioned. But Roscher is not typical of the newer writers; and to quote him ninety-nine times, while Schmoller is rather contemptuously brushed aside in two bare allusions, is not likely to give the reader confidence in the author's wide reading.

But if the work is accepted for what it is, and not for what others might desire it to be, the verdict must be distinctly favorable. M. Leroy-Beaulieu has a decidedly sane and evenly balanced mind (except possibly when he contemplates the wickedness of the socialists and protectionists); and the work is replete with interesting criticism on an abundance of well-chosen facts. Perhaps nowhere can be found a better collection of ample and well-digested statements from every field of business activity; while the comments are usually sensible and moderate. If not profound, the work is decidedly even and interesting; and if it is not calculated to give an impetus to any new movement in economic thought, it sums up, at all events, with undoubted ability, most of what is striking in the "liberal" school of French economists.

EDWIN R. A. SELIGMAN.

*Appreciation and Interest.* By IRVING FISHER, Assistant Professor of Political Science in Yale University. (Publications of the American Economic Association, Vol. XI, No. 4.) New York, The Macmillan Co., 1896.—111 pp.

The fundamental idea enlarged upon in this very able memoir is that variations in the value of money, if steady or foreknowable, tend to be neutralized, so far as the relations of debtor and creditor are concerned, by compensatory changes in the rate of interest. Professor Fisher justly says that the subject has received scant attention from economists, and that the neglect of it constitutes a serious deficiency in economic discussion, more especially as regards the burning question of the effect of the appreciation of gold (assuming it to exist) upon debtors. Indeed, there are only two important references that the author is able to give to writings in which the factor in question is recognized — the first being a paper by Jacob de Haas in the *Journal of the Royal Statistical Society*, March, 1889, entitled "A Third Element in the Rate of Interest"; and the second, Professor J. B.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Clark's paper in the POLITICAL SCIENCE QUARTERLY, September, 1895, on "The Gold Standard in the Light of Recent Theory."

The work is divided into three parts. The first part (34 pp.) contains a statement of the theory, which is extremely simple, together with a discussion of various mathematical questions involved in it, some of which are quite intricate. The second part (45 pp.) is devoted to an examination of a large number of facts fitted for the testing of the theory, and also for the determination of the degree to which, in actual experience, the compensatory modification of the rate of interest has been adequate or inadequate to the neutralization of the effect upon debts of variations in the value of money. The third part (13 pp.) deals with the application of the theory and the facts in the first two parts to the bimetallic controversy and to the general theory of interest.

The theory of the connection between appreciation (or depreciation) and interest is essentially contained in the second chapter, and is, of course, very simple. If we positively knew that the standard of value in actual use was rising in comparison with some other standard, the rate of interest which any one would be willing to pay, if the transaction were carried on in terms of the first standard, would be less than that which he would be willing to pay if it were carried on in the second. He would make allowance for the relatively increased value of the principal and interest which would become due in the one case as compared with the other. The standards in question might be gold and silver, or gold and wheat, or gold and labor, or what not. For convenience of language we shall for the moment speak of them as gold and silver. If we knew for certain that gold was appreciating relatively to silver at such a rate that a unit of gold would, at the end of a year, purchase $(1 + a)$ times as much silver as at the beginning, and if the rate of interest we were willing to pay in silver were $j$, we should be equally willing to pay in gold a rate of interest $i$, which is obviously determined as follows:

At the end of a year, the amount arising from a unit of gold would be $(1 + i)$, and the quantity of silver which this would purchase would be $(1 + a)(1 + i)$ times the quantity that a unit of gold would have purchased at the beginning of the year. But, on the other hand, if this purchase had been made and the silver had been placed at interest at the rate $j$, the amount at the end of the year would have been $(1 + j)$ times the quantity purchased at the beginning. In order, then, that the result of the two transactions be the same, it is necessary that $(1 + a)(1 + i) = 1 + j$, whence

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

$j = i + a + ai$. The formula of course reduces approximately to $i = j - a$, which is quite accurate enough for most purposes; and Professor Fisher lays too much stress on the deviation from this simple equation.

By means of this formula referring to a single year, it is possible, of course, to deduce the amount which should accrue in the course of any number of years, so as to produce equivalence in the whole outcome, as between transactions in the two standards, whether regular or irregular instalments be paid by way of interest or partial payments. The author gives the mathematical discussion of questions of this kind, including also the problem of perpetual annuities, in the third and fourth chapters; and in the fifth chapter he considers the case in which the rates of appreciation and interest vary during the period. The reader interested in the economic problem under discussion may without loss take all this for granted, and simply assume that so far as the formulas are needed for the purposes of Part II — comparison with the facts — they have been correctly obtained and are correctly applied by the author. In the sixth chapter it is pointed out that a limit is set to the possibility of compensation by the obvious requirement that appreciation must not be so rapid as to require for its correction a negative rate of interest.

Coming to the consideration of facts, Professor Fisher begins by stating (Chapter VII) that while, speaking generally, appreciation of the standard is not explicitly foreseen, it is virtually foreseen through experience of the course of prices, wages, profits, *etc.* The practical business man has this virtual foresight in a high degree, and can tell better than the academic bimetallist what interest he can afford to pay. The eighth, ninth and tenth chapters contain the most interesting matter in the memoir, being devoted in the main to the discussion of statistical data by which an attempt is made to measure the actual influence which this virtual prevision of appreciation has had upon the rate of interest. The first specific comparison made is that between two classes of United States bonds, the coin 4's and the currency 6's. The most interesting confirmation of the theory furnished by the table here presented is given by the fact that all the way from 1870 to 1875 any purchaser of the currency bonds realized a decidedly *lower* rate of interest than a purchaser of the gold bonds (both being supposed to hold the bonds to maturity), a result which can be accounted for only by supposing that there was an expectation of a rise in the gold value of the paper. It was only after 1878, when resumption had been virtually accomplished, that the relation

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

between the two classes of bonds was reversed, the gold bonds thereafter yielding a lower net interest.

The next comparison instituted is that between gold and silver. For this purpose the author avails himself of the simultaneous quotations in the London market for gold and silver India bonds. The simultaneous presence, in the same market, for a long series of years, of these two classes of bonds issued by the same government, adapts them peculiarly to serve the purpose of a study of the way in which the fall of silver since 1873 has operated upon the rate of interest. It has been objected by a reviewer of Professor Fisher's memoir that the comparison is entirely vitiated by the circumstance that the silver bonds were repayable on three months' notice, while the gold bonds had a long period to run — a circumstance which the critic says "is of itself sufficient to account for the major part of the difference in the interest rate."[1] In making this remark, however, he overlooks the circumstance that the table extends back to 1865, and that from that time until 1875, when the fall of India exchange began, the difference in rates of interest realized seems to have been only two-tenths of one per cent. Moreover, this antecedent difference is taken into account by the author in arriving at his conclusion concerning the period subsequent to 1875.

From the data furnished by the quotations, Professor Fisher finds that the average annual interest realized by persons purchasing silver bonds (the whole transaction being of course looked upon as carried on in silver) between 1875 and 1895 was 4.5 per cent, while in the case of gold bonds the average interest was 3.7 per cent, showing an estimated annual appreciation of gold relatively to silver of 0.8 per cent, or after allowance for the antecedent difference above referred to, of 0.7 per cent. But the actual annual appreciation of gold in relation to silver during these twenty years was 2.1 per cent. Accordingly, the anticipation of the decline of silver operated in a marked degree upon the rate of interest, but by no means in an adequate degree. Against the 2.1 per cent annual fall, investors protected themselves to the extent of 0.7 per cent, and the remaining 1.4 per cent means a *relative* loss to the purchasers of silver bonds.

"The question arises at this point," says Professor Fisher, "How is this 1½ per cent to be distributed? Did investors overestimate silver or underestimate gold most? There is nothing in the foregoing investigation to decide this vexed question. Our quantitative

[1] H. H. Powers in the *Annals of the American Academy*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

result is purely a differential one." He arrives at the conclusion, however, that almost certainly not more than three-fourths of one per cent was due to an underestimate of gold, since there is every reason to believe that foreknowledge in the case of gold was far better than in the case of silver. In his reasoning on this point, however, Professor Fisher seems to have fallen into a serious error. The fact that the "result is a purely differential one" not only prevents one from inferring how the difference "is to be distributed," but from asserting that it is, in any ordinary sense, to be distributed at all. There is nothing in the data presented at this point to preclude the theoretical possibility that, with reference to some third standard — and some kind of third standard must be had in mind when one speaks of a distinction between overestimating silver and underestimating gold — both silver and gold had been overestimated, and that the difference was one of degree of overestimation.

More interesting than the foregoing investigation is that next taken up, in which money (gold) is compared with commodities generally by means of index numbers. There being no recorded "commodity interest," recourse must be had to comparisons of successive periods, instead of rates simultaneously realized. Space will not permit a detailed account of the extensive and laborious comparisons instituted; suffice it to say that the record of rates of interest prevailing in periods of rising and of falling prices seems to show with sufficient uniformity that these tendencies are regularly countervailed in some measure by changes in the rate of interest, which is high or low according as prices are rising or falling. But, as in the case of the comparison between gold and silver, the adjustment is found to have been inadequate, so that commodity interest was high when money interest was low, and *vice versa*. The author regards the results arrived at as enabling us to "understand why a high rate of interest need not retard trade, nor a low rate stimulate it." While he is entirely right in his criticism of what distinguished authorities have rather fatuously said on this point, and while his conclusions throw useful light on the subject, would it not be more to the purpose simply to say, in reply to those who may be puzzled by the phenomenon in question, that the rate of interest is more the effect than the cause of business conditions, and may therefore in general be expected to be somewhere near what is justified by results?

Comparison is made not only between money and commodities, but also between money and labor; and, in view of this comparison more particularly, the final conclusion reached by the author is that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the loss sustained by debtors in general, by the appreciation of gold, after allowing for the fall of interest due to the anticipation of this appreciation, has been about two-thirds of one per cent per annum.

The foregoing will serve to convey an idea of Professor Fisher's work. It abounds in acute observations of which no mention has been made; nor has any account been given of Part III, which, while bearing directly on the living question of bimetallism, is less distinctive. The labor involved in the construction of the tables must have been extremely great. The argument is sometimes open to the charge of being one-sided, the author's attention being so strongly concentrated upon the single factor he is discussing; but it is marked throughout by great ability and insight. Professor Fisher's monograph will repay close study, and is certainly a valuable contribution to scientific economics.

FABIAN FRANKLIN.

BALTIMORE, MD.

*An Essay on the Present Distribution of Wealth in the United States.* By CHARLES B. SPAHR, Ph.D. New York, Thos. Y. Crowell & Co., 1896. — 184 pp.

Dr. Spahr has brought together what statistics there are bearing on the distribution of wealth and of incomes in Europe and the United States. It is needless to say that such statistics are very difficult to get. A census of individual wealth or income has never been attempted; and it could never be successful, because of the ignorance, untruthfulness and suspiciousness of individuals. Statistics based on income taxes, probate returns, *etc.*, suffer from the desire of people to minimize their tax burdens, and from the policy of exempting the lower incomes. The doubtfulness of the absolute figures is still further accentuated by the necessity of filling up the *lacunae* with estimates of wages, of the average amount of property enjoyed, of average consumption, *etc.*, which allow a wide margin for the subjective bias of the operator to work in.

Of these dangers Dr. Spahr is well aware. In his preface he says:

> The writer has learned, and hopes to teach, that, upon matters coming within its field, the common observation of common people is more trustworthy than the statistical investigations of the most unprejudiced experts. Indeed, he has come to believe that social statistics are only trustworthy when they show the world at large what common observation shows to those personally familiar with the conditions described.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Throughout the book Dr. Spahr gauges the bias or subjective judgment of his authorities, going so far in respect to some criticism of his own original work as to say: "This criticism would have been valid had it not come from a conservative . . . " (p. 59).

These scientific tests or canons of criticism, namely, the rejection of statistics that are contrary to common sense and of evidence presented by prejudiced observers, seem to be very fair; but when they are applied in the body of the book, their superficiality is at once apparent. The "common observation of common men" turns out to be Mr. Spahr's opinion that wealth is very unequally distributed. Every statement, however wild (such as Mr. Holmes's 4000 millionaires worth $3,000,000 apiece), that supports this opinion, is cordially accepted as statistics; while Mr. Giffen's most careful and elaborate studies are minutely criticised and then rejected. The ground for classing Mr. Holmes as a conservative, and for denouncing the whole "Aldrich Report," on the charge that the men engaged on it were hurtfully biased by the political bearings of the question, lies also in Dr. Spahr's subjective consciousness.

Statistics must be treated objectively. The inferences from them depend for their validity upon the success of the statistician in basing his figures upon trustworthy observation and in avoiding the use of conjectures to supplement his figures. The weak point in all these statistics is the large part played by "it is estimated." Mr. Holmes's conclusion that nine per cent of the families of the United States own about seventy-one per cent of the wealth rests on not less than six pure "estimates" or assumptions in regard to the average wealth of different classes over and above their indebtedness. By a further series of "estimates" — for example, by conjecturing that "in the nation at large, the number of families worth more than $500 is perhaps one million in excess of the number owning their homes or farms," and "that the propertyless families own household property worth $150" — Dr. Spahr reaches the conclusion that one per cent of the families own as much property as the remaining ninety-nine. I doubt if this conclusion would agree with the "common observation of common people"; but even if it should, it is not based on statistics.

Having shown that property and incomes are unequally distributed and that (in his opinion) the inequality is increasing, Dr. Spahr seems to think that his task is ended. But that is only the beginning. The real question is whether such concentration of wealth is not a good thing for the whole community. Dr. Spahr naïvely

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

assumes that an equal distribution of wealth is the best system. Still more naïvely he asserts:

> The distribution of wealth is under the direct control of laws for which the national conscience is responsible; and the distribution of wealth has become better or worse precisely as the national conscience has been directed to, or directed from, the laws controlling it.

This happy position ignores the complexity of the social arrangements by which wealth is produced and distributed, and the absolute necessity for leadership in industry, for forethought and saving, and for the development of character and responsibility.

The happiness of individuals is measured, not according to their ownership of property or even according to income, but according to their command of the enjoyments of life. To measure this statistically is a task which Dr. Spahr does not essay. Mr. Giffen's *Progress of the Working Classes* still remains the most notable attempt in that direction, but it is ignored in this book. In Part III on the "Distribution of Taxes," the author seems to catch the true spirit of such an investigation. The injustice of particular forms of taxation, says he, rests on the unequal diminution of the power of enjoyment which they impose on the several classes. He advocates the principle of the personal property tax as "thoroughly imbedded in the public consciousness," so that "violations of it are everywhere felt to be an abuse demanding a remedy." But he glides over the difficulties of assessing personal property, and even seems to believe that we are more and more successful in reaching its true valuation. The polemic against Professor Seligman's assertion that the assessed valuation of personal property in California had decreased since 1872 is hardly sustained by the table on page 148, namely:

ASSESSMENT OF PERSONALTY IN CALIFORNIA.

| | |
|---|---|
| 1871 . . . . . | $ 86,000,000 |
| 1872 . . . . . | 220,000,000 |
| 1873 . . . . . | 118,000,000 |

This shows, according to Dr. Spahr, that 1872 was an exceptional year. But if we continue the table, we shall have:

| | |
|---|---|
| 1874 . . . . . | $210,000,000 |
| 1875 . . . . . | 199,000,000, |

which removes the basis for such a contention. It would be pleasant to believe that personal property pays its full share of taxes, for it would nullify much of the denunciation of the rich for

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

evasion of public burdens. It does not seem to me, however, that Dr. Spahr has given due consideration to the mass of evidence presented by Dr. Seligman on this point in the essay on the property tax, from which the above figures were taken. Without presuming to decide the question, I should say that Dr. Spahr's further contribution to the discussion, namely, that the census estimate of the amounts of personal and of real property ($25,000,000,000 and $40,000,000,000, respectively) reveals the true proportion of personalty to realty, and that assessed values are approaching that proportion, involves the statistical fallacy that is so frequent throughout the book —the assumption that the correspondence of two uncertain estimates establishes certitude.

RICHMOND MAYO-SMITH.

*La Science Sociale, d'après les Principes de Le Play et de ses Continuateurs.* Par J. B. M. VIGNES. Paris, V. Giard et E. Brière, 1897.—2 vols., 460, 455 pp.

*Conscience et Volonté Sociale.* Par J. NOVICOW. Paris, V. Giard et E. Brière, 1897.—380 pp.

An important contribution to descriptive sociology is made by M. Vignes's work, in which one of the definite methods which have been proposed for this science — that of Le Play — is applied, not indeed with the minute fullness of Le Play's own writings, but with rather more consecutiveness and with more conciseness and precision.

The work is divided into three parts. The first, after an explanation of Le Play's method, presents a careful account of primitive social conditions, including a description of the primitive family, of the economic stages of fishing, hunting and pasturage, of the beginnings of the useful and liberal arts, and of the primitive modes of religion. The second part deals with the invention of labor-saving devices, the domestication of animals and the use of wind and water for transportation and for rude manufacturing operations. This stage brings with it certain transformations of the family, which are explained, with little attempt at critical discussion. The development of new arts of utility, and the origins of mining, forestry and exchange are also explained; and the new developments of religion, of war and of government, which are consequent upon the economic progress of this stage, are considered. The third part deals with the age of steam and of electricity. The great inventions and the modern organization of labor are described; and those changes in family life which have been brought about by the transformation of industry,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the growth of population and the development of civilization are discussed.

From this brief description of the work it will be seen that M. Vignes has not attempted what Le Play undertook, namely, to describe particular societies with full attention to geographical divisions and historical conditions. He has rather given us an account, as nearly as possible in accordance with Le Play's method, of the general evolution of society. His work is therefore to be compared not only with the monographs of Le Play, but also with the accounts of social evolution which have been written by Spencer, Letourneau and De Greef. Unlike the latter works, however, this treatise makes no attempt to deal with all phases of social evolution: its chief purpose is to explain the evolution of family life as it has taken place under the influence of economic and industrial development. That Vignes's opinions are substantially identical with those which Le Play so strongly defended is everywhere manifest. He takes an extremely gloomy view of the present state of family life, and attributes what he calls the ruin of the modern family and the rapid diminution of the birth-rate in civilized countries to modern industrial methods and to democracy.

In M. Novicow's treatise on the social consciousness and will there is a very different conception of sociological method and, of course, an altogether different explanation of social problems. Novicow is chiefly interested in the psychological phenomena of society, and his studies are analyses of social thinking, feeling and action. He argues that in every nation there is naturally formed an intellectual *élite* which he calls a social sensorium. He undertakes to describe the process by which ideas appear and spread within a population, transforming themselves successively into ideals, desires and actions. One of the most interesting portions of his volume is that in which he discusses the rapidity with which ideas are transformed into social action, and the limits of social consciousness in space. The latter phenomenon is the psychological basis of patriotism.

In the latter part of his volume, M. Novicow discusses some of the modern questions of the day in European societies. This gives him an opportunity to illustrate the application of his psychological theories in a very interesting way. The great modern questions seem to him to group themselves under the categories of militarism and socialism. The student of sociology will find many fruitful suggestions in M. Novicow's strictly psychological discussion of these themes.

FRANKLIN H. GIDDINGS.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*The History of Economics.* By HENRY DUNNING MACLEOD. New York, G. P. Putnam's Sons, 1896. — xv, 690 pp.

Those who expect to find in Mr. Macleod's latest book a veritable history of the science of economics will be grievously disappointed. But those who are interested in learning some autobiographical details about the well-known author, and in having dished up to them in a new form some of the ideas that he has been developing with endless iteration for the past thirty years, will find the book to their liking. Starting with the conception that economics is a physical science, and that its really important content hinges on the definition of wealth and value, Mr. Macleod treats in turn of Demosthenes, the classic jurists, Condillac and the Physiocrats, Adam Smith, Ricardo, Whately, Say, Mill, Bastiat, Perry, Jevons and himself. His sense of proportion may be inferred from the fact that he devotes six pages to Ricardo, four to Bastiat and fourteen to himself. This is excusable; for, when as a mature man he began to study the works of the classic economists, he found that "they were merely a chaos of confusion and contradictions," "in no sense a science, but the butchery of a science." "I saw," he adds, "that the greatest opportunity that had come to any man since the days of Galileo had come to me"; and he describes in detail how he successfully seized the opportunity. As a matter of fact, Mr. Macleod has for the past ten or fifteen years been seeking to impress upon a somewhat incredulous public the importance of his new contribution to economics.

The major part — about five-sixths — of the present volume is devoted to a consideration of the fundamental concepts and axioms of economics, arranged alphabetically from "Acceptilation" to "Wealth." This analysis, it must be conceded, is always acute and interesting, especially in those pages where he leaves his well-worn topics of money and credit and discusses some of the more general principles, like that of rent. Naturally, he has nothing but sneers for the "scholastic economists, such as Mill, Capps, Jevons, Roscher and Marshall"; and he furnishes his readers with a ready-made general estimate of his work in the following words:

> I have now laid bare the foundations of economic science. Like Botta and Layard at Nineveh; Schliemann at Troy, Argos and Mycenae; Petrie and many other explorers in Egypt — I have swept away the rubbish and folly which has accumulated over the doctrines of the ancients for centuries, and laid bare the solid and impregnable foundations upon which the majestic structure of economic science is to be erected.

EDWIN R. A. SELIGMAN.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Industries and Wealth of Nations.* By MICHAEL G. MULHALL. London, Longmans, Green & Co., 1896. — 451 pp.

This work needs but little notice. It is by the author of the well-known *Dictionary of Statistics*, and has the same faults as that work, namely, uncritical use of statistical data, unwarranted assumptions in order to fill up gaps and lack of adequate references to authorities by which the figures can be verified. The book is dedicated to his "Fellow-workers in the Field of Statistical Research"; but I doubt if in any other science a compendium would be regarded as a work of research, or a mass of unverified or unverifiable data and conclusions would be welcomed by fellow-workers. Mr. Mulhall quotes with approval Leroy-Beaulieu's dictum, "We must avoid the absurdity of limiting statistics to ascertained facts, for in many cases this branch of science can reach only approximate results"; but he evidently misunderstands it. He seems to think that it frees the statistician from all control, and that a "guess," however wild, is better than no guess at all. The truth is, that the moment we leave the ground of ascertained fact, and reach the domain of simple probability, it becomes all the more necessary to explain the method and to give the reasoning by which each conclusion has been reached.

Mr. Mulhall's methods are revealed in his treatment of one of his most interesting categories — the "Earnings of the World." These he gives with great precision, both for all countries and for different branches of industry in each country. As there are, of course, no direct statistics, he adopts as applicable to all countries the formula described below. To determine the annual income of a nation he adds together the following figures:

Agriculture: 60 per cent of the gross annual product.
Manufactures: 50 per cent of the output of mills and artisans.
Mines, forests, fisheries: total annual product.
Commerce: 10 per cent of aggregate internal trade.
Transportation: 10½ per cent of the same.
House-rent: 6 per cent of the value of all houses.
Domestic wages: two-thirds of all house-rent.
Public service: 50 per cent of the national revenue.
Professions: 10 per cent of the sum of all the preceding items.

The three last criteria are so strange that a little explanation would have been welcome. That commercial earnings are ten per cent of the aggregate internal trade is possible, did we know what the aggregate internal trade is. The other estimates are equally unsupported.

RICHMOND MAYO-SMITH.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# RECORD OF POLITICAL EVENTS.

[From November 12, 1896 to May 8, 1897.]

## I. THE UNITED STATES.

**FOREIGN RELATIONS.** — The period has been characterized by considerable activity in this field. As during the preceding year, relations with Great Britain and with Spain have contributed the most important incidents. The settlement of **the Venezuelan boundary dispute**, announced at the end of the last RECORD, was carried into effect as follows. On November 9, a protocol was signed by Secretary Olney and Sir Julian Pauncefote embodying an agreement that the boundary should be determined by an arbitral tribunal, whose decision should be governed by three rules: (1) that adverse holding for fifty years should make good title; (2) that the arbitrators might recognize rights and claims resting on any other ground that is valid according to existing international law; and (3) that in case territory of one party be found to be occupied by citizens of the other, "such effect shall be given to such occupation as reason, justice, the principles of international law and the equities of the case shall in the opinion of the tribunal require." The members of the tribunal were to be nominated, two by the justices of the United States supreme court, two by the judges of the British supreme court of justice, and a fifth by the King of Sweden. On the basis of this agreement a treaty of arbitration was negotiated by the British and Venezuelan ministers at Washington, and was signed February 2. The treaty embodied some slight modifications of the plan proposed in the agreement: for example, the nomination of one of the arbitrators on behalf of Venezuela was assigned to her chief executive, the other being named by the justices of the United States supreme court. The arbitrators named were, for Great Britain, Baron Herschell and Sir Richard Collins; for Venezuela, Chief Justice Fuller and Justice Brewer. The rules to govern the arbitration were incorporated in the treaty in substantially the same form as in the agreement. The final ratifications of the treaty were exchanged February 27. On the same day the boundary commission appointed by President Cleveland formally terminated its existence and submitted its report. The report consisted merely of a description of the work done by the commission and of the material collected and filed. — The negotiations for a **general arbitration treaty** with Great Britain ended in the signing of such a treaty by Secretary Olney and Sir Julian Pauncefote at Washington, January 11. On the following day the document was transmitted by President Cleveland to the Senate for ratification. The chief provisions of the treaty were as follows: The parties agreed to arbitrate all questions of differ-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ence between them which they might fail to adjust by diplomatic negotiation. Three kinds of tribunals were provided for: the first to consist of two arbitrators, with an umpire to be appointed by agreement between the justices of the Supreme Court of the United States and the members of the Judicial Committee of the British Privy Council; the second to consist of four arbitrators, with an umpire to be chosen as in the first class; the third to consist of six members, three to be named by the president from the judges of the Supreme Court or Circuit Courts of the United States, and three to be named by the queen from the judges of the British Supreme Court of Judicature or the members of the Judicial Committee of the Privy Council. For tribunals of the first and second classes the umpires were to be appointed, in case of a failure of the designated authorities to agree, by the King of Sweden. To tribunals of the first class was assigned jurisdiction over all differences which did not involve the determination of territorial claims. In cases of pecuniary claims not exceeding £100,000 in amount, the decision by a majority of such a tribunal was to be final. For pecuniary claims involving larger amounts and for all other matters in its jurisdiction its decision was to be final only if unanimous; if not unanimously decided such cases might be taken by either party for review to a tribunal of the second class, whose decision by majority was to be final. Any controversy involving territorial claims was to go to a tribunal of the third class, whose award was to be final if determined by a majority of not less than five to one, or if, when made by a less majority, neither party within three months protested against it as erroneous. In case of a failure of arbitration through insufficient majority or through protest, there was to be no recourse to hostile measures until mediation had been invited. Finally, in any case before a tribunal of the first or second class, the tribunal might decide, on the motion of either party, that the determination would involve a "disputed question of principle of grave general importance affecting the national rights of such party"; whereupon the case must be dealt with by a tribunal of the third class. This treaty was greeted with widespread favor in the press, but was antagonized at once in the Senate by the jingo element and by the personal adversaries of the administration. The committee on foreign relations reported the draft favorably, but with certain amendments, on February 1. The ensuing debate soon revealed that a vote on ratification could not be obtained before March 4, and the whole matter was dropped. At the opening of the new Congress the Senate committee again considered the treaty and reported it, with amendments, on March 18. During two weeks' discussion the Senate adopted the committee's amendments and also others, with the result that the draft was radically transformed. Instead of the general reference of all disputes to the tribunals, it was provided that any difference "which, in the judgment of either power, materially affects its honor or its domestic or foreign policy," should be submitted to arbitration only by special agreement; that no question should be submitted save with the consent of the Senate in its treaty-making capacity; and that no claim of a British subject

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

against a state or territory of the United States should be submitted under any circumstances. The first of these changes was due mainly to the objection that without it the Monroe Doctrine might be subjected to arbitration; the second to the sensitiveness of senators as to their constitutional functions in foreign relations; and the third to a desire to protect states against claims on their defaulted bonds. Other changes modified materially the method of appointing the arbitrators for the United States, and struck out entirely the designation of the King of Sweden as umpire. Even with these amendments, the opposition to the treaty was not overcome; and the final vote on ratification, taken May 5, resulted in its rejection, the vote standing 43 to 26, less than two-thirds in the affirmative. Thirty Republicans and thirteen Democrats voted for the treaty; eight Republicans, twelve Democrats and six Populists against it. — President Cleveland devoted considerable space in his annual message to our **relations with Spain and Cuba.** All the evidence pointed, he declared, to a prolonged conflict between the Spanish government and the rebels, with no certainty as to the result save that the industrial value of the island would be totally destroyed. The loss of invested capital thus threatened, together with the strain and expense of maintaining the obligations of a neutral in the presence of a widespread and active popular sympathy for the insurgents, gave to the United States a lively interest in the situation. But none of the proposals commonly favored embodied a feasible method of manifesting this interest. The recognition of belligerency to the insurgents would be detrimental to our own concerns; the recognition of Cuban independence was impracticable, because the insurgents possessed no discoverable civil organization; the purchase of the island was impossible, since Spain refused to sell; and armed intervention, at the cost of war with Spain, was at present incompatible with the pacific character and national honor of the United States. Under these circumstances the president declared that mutual concessions by Spain and the insurgents seemed the only possible road to peace. Accordingly the government had suggested to Spain the bestowal of autonomy on the island with satisfactory guaranties of her own sovereignty, and had intimated that influence would be exerted to secure from the insurgents an acceptance of this concession. But, Mr. Cleveland continued, if neither this nor any other solution should terminate the war, a time would probably come and a situation arise, "in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge." Under no circumstances would the United States permit the acquisition or control of Cuba by any foreign power other than Spain. As to the method of action when the proper time should arrive, the president deemed that that should be left open. — The somewhat aggressive conclusion of the president's statement apparently stimulated the friends of Cuba in Congress to force matters to an issue. On December 18 the Senate committee on foreign relations agreed to report favorably a resolution acknowledging the independence of the Republic of Cuba and declaring

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that the United States would use its friendly offices to end the war with Spain. An incipient "war scare" was caused by this action; but on the following day Secretary Olney gave to the press a statement deprecating the harmful effect of the committee's proceeding, and declaring that the power to recognize the independence of Cuba "rests exclusively with the executive." The proposed resolution, if passed by the Senate or by the House, "can probably be regarded only as an expression of opinion by the eminent gentlemen who vote for it." Such a resolution, if passed by both Houses, "is inoperative as legislation and is important only as advice of great weight tendered to the executive." The secretary's somewhat caustic statement produced as great a sensation as the action which called it forth; but his position was supported by many constitutional lawyers, even in Congress. The resolution was duly reported to the Senate, but for some reason its author, Senator Cameron, refrained from pressing it for consideration. — In connection with the protection of American citizens in Cuba the State Department has been kept very busy. The citizens in question are in many cases Cubans, whose naturalization has been made useful for the purpose of aiding the insurgents and escaping the consequences. In February the matter of Julio Sanguilly gave occasion for another outbreak of anti-administration heat in the Senate. Sanguilly had been convicted by a civil court of participation in insurgent operations, and was under sentence of imprisonment. His case had been the subject of active negotiations with Spain, but on February 24 a resolution was brought up in the Senate demanding his instant and unconditional release. The State Department was bitterly denounced in debate for its weakness; but at that very time a pardon had been promised by Spain, and on the 26th the prisoner was set free. Sanguilly came to New York, and early in April was arrested in Florida on charge of complicity in fitting out a filibustering expedition. As to the maintenance of the neutrality laws at home, the work of the administration has been materially aided by the action of the courts. On March 1 the supreme court sustained the seizure and forfeiture of a notorious filibustering craft, the *Three Friends*. In February a Philadelphia merchant of good standing was sentenced to imprisonment for two years, on conviction of concern in a filibustering enterprise. — Lesser incidents in our foreign relations have been as follows: On December 3, the president issued a proclamation reimposing on vessels from German ports certain tonnage dues which had been suspended in 1888. His action was based on proof that some of the German states had imposed such dues on American vessels, though reciprocal exemption had been a condition of the suspension of 1888. On January 30, Secretary Olney and Sir Julian Pauncefote concluded a convention providing for a commission to mark the Alaskan boundary along the 141st meridian, where existing uncertainties have recently assumed importance, owing to the discovery of gold in the region. President McKinley in April took up the serious consideration of the seal fisheries in Bering Sea and appointed commissioners to submit a plan for effectively

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

protecting the herd from destruction. On the 19th he appointed J. W. Foster as special envoy to negotiate with Great Britain an agreement for joint action in the matter. It is understood that communications have been exchanged between the two governments looking to some modification of the Paris tribunal's regulation of pelagic sealing. — A congress of the International Postal Union assembled at Washington, May 5, with delegates from all parts of the world.

**THE CLEVELAND ADMINISTRATION.** — In internal affairs the final months of President Cleveland's term were uneventful. At the treasury the deficit increased steadily and by the first of March had reached $48,000,000 for the fiscal year. The gold reserve, on the other hand, maintained throughout the winter a reassuring aspect. No indication appeared of a reaction from the inflow of the metal that was in progress at the close of the last RECORD, and the reserve in the treasury reached and maintained the amount of $150,000,000. Secretary Carlisle refused, however, in November to resume the issue of gold certificates, on the ground that such action would tend to check the increase of the reserve. — In the sphere of the Interior Department several important actions are noteworthy. On February 7, by order of the president, the number of pension agencies in the United States was reduced from eighteen to nine, effecting an annual saving of $160,000. On the 22d the president set aside by proclamation thirteen new forest reservations in the public lands of the West, including some twenty million acres, and raising the total amount of land thus reserved to nearly forty millions. The number of distinct districts reserved was increased by this action to forty. Mr. Cleveland's order was violently assailed by Western Senators, and strong pressure was put upon Mr. McKinley to revoke or modify it. In December the Dawes Commission for treating with the five civilized tribes of Indians reached, after long negotiation, an agreement with the Choctaws and Chickasaws, by which these two tribes undertook to accept allotments of their lands in severalty and to abandon their independent political organization. — On January 22, after the failure of the funding bill in the House of Representatives (see *infra*, p. 359), Attorney-General Harmon began foreclosure proceedings against the Union Pacific Railway Company on subsidy bonds that had fallen due on or before January 1. Under an arrangement previously made with representatives of the company, the government was assured of receiving about $46,000,000 in cash, equivalent to the principal of the bonds and about 3⅓ per cent interest. The stipulated interest was six per cent.

**THE McKINLEY ADMINISTRATION.** — The new president was inaugurated on March 4 with the usual ceremonies. In his **inaugural address** he dealt first with the questions of currency and finance. As to the former, he suggested a commission to study and report upon the whole situation; at the same time he promised to do all in his power for international bimetallism, meanwhile using every available resource to keep the value of our silver coin on a par with gold. Of fundamental importance,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

however, was a revenue adequate to meet the expenses of the government. This, he held, must first be secured, and by legislation which should heed the unmistakable mandate of the people in the elections, that not internal taxes but a tariff on the protective principle should be the means to the desired end. Mr. McKinley announced his approval of the Republican Party's anti-trust policy and of checks on immigration, and spoke warmly in behalf of civil-service reform. As to foreign affairs, he promised a policy firm, dignified, just and impartial, but avoiding wars of conquest or territorial aggression. Holding that "peace is preferable to war in almost every contingency," he eulogized arbitration as the true method of settling international differences, and urged upon the Senate the early ratification of the pending treaty "not merely as a matter of policy, but as a duty to mankind." Finally, an extra session of Congress was announced, to deal with the tariff question; and the address concluded with congratulations to the country that the elections indicated the obliteration of old sectional lines. — President McKinley's cabinet was not completed until the day before inauguration. It was as follows: Secretary of State, John Sherman of Ohio; Secretary of the Treasury, Lyman J. Gage of Illinois; Secretary of the Navy, John D. Long of Massachusetts; Secretary of War, Russell A. Alger of Michigan; Secretary of the Interior, Cornelius N. Bliss of New York; Postmaster-General, James A. Gary of Maryland; Attorney-General, Joseph McKenna of California; Secretary of Agriculture, James Wilson of Iowa. As usual, **appointments to office** occupied most of the administration's attention during its first weeks in power, though the recent extensions of the civil-service reform produced a notable falling off in the pressure of office-seekers. The only important branch of the service yet open to the old methods is that of fourth-class and "presidential" post-offices. Here an immediate "clean sweep" has been the rule at the accession of a new administration; but on March 15 Postmaster-General Gary announced that except where removals were made necessary by delinquency or incompetency, all postmasters would be allowed to complete their four-year terms. Secretary Sherman also announced that the system of consular appointment recently put in force by Secretary Olney would be retained. In the diplomatic service the following appointments have been made. Ambassadors: to Great Britain, John Hay of the District of Columbia; to France, Horace Porter of New York; to Germany, Andrew D. White of New York; to Italy, William T. Draper of Massachusetts. Ministers: to Mexico, Powell Clayton of Arkansas; to Austria-Hungary, Charlemagne Tower of Pennsylvania; to Japan, A. E. Buck of Georgia; to Turkey, J. P. Angell of Michigan. In the consular service: consul-general at London, W. M. Osborne of Massachusetts; at Paris, J. K. Gowdy of Indiana. In the departments at Washington, assistant secretaries as follows: Treasury, O. L. Spaulding of Michigan and W. B. Howell of New Jersey; Agriculture, J. H. Brigham of Ohio; Interior, Thomas Ryan of Kansas and Webster Davis of Missouri; Navy, Theodore Roosevelt of New York; State, T. W. Cridler of West Virginia

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and W. R. Day of Ohio; War, G. D. Meiklejohn of Georgia; Assistant Postmasters-General, Perry S. Heath of Indiana, W. S. Shallinberger of Pennsylvania and J. L. Bristow of Kansas. Commissioner of patents, Benjamin Butterworth of Ohio; of pensions, H. C. Evans of Tennessee; of the general land office, B. Hermann of Oregon; of Indian affairs, W. A. Jones of Wisconsin. — The currency and finances began in April to assume a somewhat different aspect from what was familiar during the winter. In view of the approaching increase of duties vast quantities of imports were hurried through our ports in March, and the treasury's receipts for the month showed a large excess over expenditures. The movement continued through April, and by May 1 the deficit for the year had fallen to $33,000,000. On April 24 a change in the comfortable currency situation was manifested by the exportation of gold for the first time since autumn. Up to the close of the RECORD, however, the movement had not assumed serious proportions. President McKinley, on April 12, appointed three monetary commissioners to promote the cause of international bimetallism, under the act of Congress mentioned below. The appointees were Senator Wolcott, ex-Vice-President Stevenson and General C. J. Paine of Boston.

**CONGRESS, REGULAR SESSION.** — The second session of the Fifty-fourth Congress opened on December 7. The president's **Annual Message** was a long document, covering all phases of the government's activity. As to foreign affairs, in addition to the discussion of the Cuban insurrection, summarized above, the only noteworthy passage was that touching the Armenian massacres. Here Mr. Cleveland pointed out the difficulty of giving adequate protection to our missionaries, but declared that everything possible had been done and that claims had been pressed upon the Ottoman government for compensation for missionary property destroyed at Harpoot and Marash. As to internal affairs, the president sketched the condition of every department, but without novel or striking treatment or suggestions. He concluded with a defense of the existing tariff, claiming that its provisions would ultimately insure a sufficient revenue, that meanwhile the treasury would be able to pay its way, and that the operation of the tariff on commerce and general welfare was altogether beneficial. As to the currency, he recorded again his conviction that the true way to reform lay through withdrawal of the greenbacks and Sherman notes, and authorization of the national banks to expand their circulation so as to provide all the currency needed. — The legislative output of the session was scanty. A considerable number of private pension bills were passed, many of them becoming law without the president's approval; but the most important **public measures enacted** into law were (1) that abolishing the death penalty in all federal convictions except for treason, murder or rape; (2) that prohibiting the sale of intoxicating drink to Indians; and (3) that authorizing the president to appoint commissioners to any international conference that may be convoked on the subject of bimetallism, or to call such

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a conference himself. — More numerous were the important **measures that failed.** On January 11 a bill to refund the debt of the bond-aided Pacific railways and settle up the long-standing problem as to their relations to the government was defeated in the House, after a sharp debate, by 168 to 102. A few days later a Nicaragua Canal Bill, which proposed that the United States should assume control of the construction of the work under a franchise granted by Nicaragua to a private company, was met by a protest from the Central American minister at Washington, declaring that the franchise in question was already forfeited by failure of the company to fulfill its conditions. After this protest the bill, which had seemed likely to pass in the Senate, was withdrawn by Senator Morgan, who professed to see British influence behind the action of the minister. An Immigration Bill passed both houses, and was sent to the president February 17. It excluded from admission to the United States, in addition to the classes already excluded, all persons over sixteen years of age unable to read and write, except the aged parents and grandparents and the wives and minor children of qualified immigrants; and prohibited from coming "regularly or habitually" to the United States to work, those male aliens who returned home "from time to time." On March 2 the president vetoed the bill on the grounds, among others, that further restriction of immigration was at present unnecessary; that illiterate immigrants were less dangerous than educated agitators and anarchists from abroad; and that the provision designed to shut out Canadian workingmen was "illiberal, narrow and un-American." Forty-five bills were subjected by President Cleveland to the "pocket veto," of which a joint resolution to prevent the introduction and spread of contagious diseases into the United States was perhaps of the most general importance. — **The appropriation bills** provided for a total expenditure of about $526,000,000, eleven millions more than for the current year. Four of the bills failed to become law by the end of the session. One — the General Deficiency Bill — was in conference between the two houses when the session expired. Three others — the Sundry Civil, the Indian and the Agricultural Bill — were sent to President Cleveland in time, but for various reasons he refused to sign them. As the extra session was known to have been resolved upon, the failure of the bills was not regarded as of great importance.

**CONGRESS, EXTRA SESSION.** — The policy of an extra session of the new Congress was decided upon by the Republican leaders in December. It became evident during that month that there was no hope of passing any tariff measure in the Senate, owing to the hostile attitude of the silver Republicans. Accordingly, the House ways and means committee proceeded to prepare a general revision of the tariff, to be submitted to the new Congress. Hearings were given to interested parties for the two weeks succeeding December 28, and the bill was ready for introduction in March. On the 6th, President McKinley issued his proclamation summoning Congress to meet on the 15th. The Senate had already met in the customary

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

special session to confirm the incoming president's appointments, but had done nothing toward reorganizing its committees except to put Mr. Davis of Minnesota in the chairmanship of the committee on foreign relations, made vacant by Mr. Sherman's entrance into the cabinet. The new House, assembling on the 15th, organized by the reëlection of Speaker Reed and the other officers of its predecessor. The party classification of the House was: Republicans, 206; Democrats, 122; Populists, Silverites and Fusionists, 29. In accordance with the policy agreed upon by the Republican leaders, only three committees were appointed — those on rules, on ways and means and on mileage — so that no business but the appropriations and the tariff could be proceeded with. The four appropriation bills that had failed were promptly passed on the 19th and 20th in substantially the form in which they had passed the previous House. On the day Congress met Mr. Dingley, chairman of the ways and means committee, introduced **the tariff bill** that had been prepared under his guidance. Its character and contents, as described in Mr. Dingley's statement, were as follows: The purpose was twofold, to raise revenue and to encourage the industries of the United States. The bill as drafted was expected to give from seventy to a hundred millions increase over the present revenue. The chief means to secure this increase were the transfer from the free to the dutiable list of wool, lumber, opium, paintings and statuary, and other articles; an increase of duty on woolens, sugar, agricultural products, manufactures of jute, flax and hemp, some grades of iron and cotton goods, and especially on liquors, tobacco, silks, laces, *etc.* As a rule, the rates were fixed between those of 1890 and those of 1894. In the agricultural, the wool and the glass and earthenware schedules the rates of 1890 were restored, and in a few cases increased. Specific duties were in general preferred to *ad valorem*, and the reciprocity provisions of 1890 were restored, with the addition of new articles — among them wines, mineral waters and silk laces — as a basis for making reciprocal agreements. Under a rule adopted by the House on the 19th, the Dingley Bill was debated for ten days, and was then, on March 31, adopted by 205 to 121. The majority included five Democrats and one Populist; no Republican voted against the bill and 21 silver men declined to vote. Some amendments were adopted during the debate: the exemption from duty of books and scientific apparatus for the use of educational institutions, which the bill had repealed on account of the frauds based on it, was restored, probably in consequence of an earnest and widespread remonstrance from colleges and universities; further, in order to prevent a great loss of revenue by anticipatory importations, a clause was inserted on the last day, putting the schedules in effect on all imported goods that were actually purchased on or after April 1, 1897, without reference to the date of the bill's final passage. After concluding its work on the tariff, the House, without taking up any other business, merely kept in nominal session, by adjournment at the constitutional three-day intervals, pending the Senate's action on the bill. The latter body, because the Populists and silver Republicans still

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

held the balance of power, was unable to organize its committees or make much progress with business. Some consideration of appropriations and the passage of a bill for the relief of the sufferers by the Mississippi floods, April 7, constituted almost the whole legislative work of the month. The Senate committee on ways and means was meanwhile laboriously considering the Dingley Bill, and on May 4 the measure was reported, with about a thousand amendments. The changes tended on the whole to lower rates; and revenue was further aimed at by provisions for a duty on tea and an increase of the internal tax on beer, both, however, to terminate on January 1, 1900.

**THE FEDERAL JUDICIARY.** — The following decisions have been made by the supreme court. November 16, Fallbrook Irrigation District *vs.* Bradley: Held, that the California statutes providing for the formation of irrigation districts in the arid belt and authorizing the assessment of lands to pay the cost of irrigation are not in conflict with the constitutional prohibition against taking property without due process of law. November 30, Missouri Pacific R. R. Co. *vs.* Nebraska: Held, that a state law authorizing the requirement that a railway company shall surrender to individuals a site for an elevator to be erected and used for their private benefit is unconstitutional, as permitting private property to be taken without due process of law. December 14, Turnpike Road Co. *vs.* Sandford: Held, that a Kentucky law reducing rates chargeable by a turnpike company so unreasonably as to prevent the company from making adequate repairs or declaring dividends out of its receipts is unconstitutional, as taking private property without due process of law. January 4, R. R. Co. *vs.* Mathews: Held, that the Missouri statute making railroad companies liable for property destroyed by fire from their locomotives is not repugnant to the national constitution. January 18, R. R. Co. *vs.* Ellis: Held, that a Texas statute making railroad companies liable for an attorney's fee in case of failure to pay small claims within thirty days after presentation is unconstitutional, as depriving such companies of the equal protection of the law. January 18, Scott *et al. vs.* Donald: Held, that the provisions of the South Carolina Dispensary Act forbidding the importation of liquor by any one except certain state officers are unconstitutional, as restricting interstate commerce. February 1, Sandford *vs.* Poe and other cases: Held, that the "Nichols Law" of Ohio, providing that the property of telegraph, telephone and express companies may be taxed at a valuation ascertained by comparing the property in the state with the entire property of the company, is not in conflict either with the interstate-commerce provision of the constitution, or with that forbidding a state to deny to any one the equal protection of the laws, or with that prohibiting the taking of property without due process of law. January 25, Robertson *et al. vs.* Baldwin: Held, that the federal law conferring on state justices of the peace power to arrest and return to their ships deserting seamen is not repugnant to the constitution, and that such arrest and return is not contrary to the guaranties of liberty in the amendments to the constitution. March

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

1, Allgeyer *vs.* Louisiana: Held, that the Louisiana law which prohibits a citizen from doing in the state certain acts necessary to secure for property in the state insurance in a foreign company that has not complied with state laws, is invalid, as depriving a citizen of liberty without due process of law. April 19, *In re* Chapman: Held, that the proceedings through which a person had been sentenced to fine and imprisonment for refusing to answer questions before a Senate Committee investigating charges of corrupt conduct on the part of Senators, were in conformity with law and with the constitution.

**THE ELECTIONS.** — The completed returns of **the presidential vote** in November made McKinley's plurality over Bryan a little more than 600,000, instead of the million stated in the last RECORD. The latter figure was based on the returns from the more populous centers, while the rural returns, coming later, revealed the chief strength of the Democrats and Populists. Of the minor candidates, Palmer received about 139,000 votes, New York leading with 19,000; Levering, the Prohibition candidate, received 134,000, Pennsylvania leading with 19,000; and Matchett, the Socialist candidate, received 34,000, New York contributing about one-half of them. The electoral vote, as finally counted, stood 271 for McKinley and 176 for Bryan. For vice-president, however, the opposition to the Republican candidate was divided between Sewall, the Democrat, and Watson, the Populist; and the vote stood, Hobart, 271, Sewall, 149, Watson, 27. — **The senatorial elections** secured to the Republicans a less effective control of the Senate than had been anticipated. Utah elected a Democrat in place of a retiring Republican, and in Idaho and Washington silver Republicans were replaced by Populists. On the other hand, Democrats were replaced by Republicans in Illinois, Indiana, Maryland, New York, Ohio and Wisconsin. The composition of the new Senate was ultimately as follows: Republicans, 48 (6 silver); Democrats, 35 (4 gold); Populists, 7. — **The municipal elections** in April in the West showed a very heavy reaction from the Republican majorities of last November. Chicago, in particular, gave a great Democratic victory.

**THE ANTI-TRUST MOVEMENT.** — The period under review has been characterized by a widespread manifestation of legislative and judicial hostility to industrial and commercial combinations of capital. This fact is attributed by many to the influences which were evoked by the Populistic element in the last presidential campaign. Practically all the state legislatures that were in session during the winter considered anti-trust bills; and the list of states in which such measures actually became law includes Georgia, Indiana, Wisconsin, South Carolina, Arkansas, New York, Nebraska, Tennessee, North Dakota and South Dakota. The Georgia Act, which was passed in December, was very sweeping in its provisions. It declared unlawful and void all contracts or combinations tending to lessen free competition in the importation or sale of commodities, or "to advance, reduce or control the price" to either producer or consumer; for violating

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the act domestic corporations were to forfeit their charters, while foreign corporations were to be prohibited from doing business in the state. Similar acts were passed by South Carolina, North Dakota, and Arkansas. In New York a committee of the legislature in February carried on an investigation of "trusts," devoting especial attention to the organizations that control respectively the sugar and the coffee business. As a result of its labors the committee reported two bills which were passed in March, but were of a rather less vigorous character than that described above. — A special phase of the anti-monopoly movement was an agitation, central at Chicago, against the great retail department stores. Legislation to restrain these enterprises, either by taxation or otherwise, was considered in Illinois and a number of other states, but no effective results seem to have been obtained. — The most important event, perhaps, in this general field was the **Anti-Trust decision of the Supreme Court** of the United States, March 22, in the case of United States *vs.* Trans-Missouri Freight Association. This was a case in which the Department of Justice had sought to dissolve an association of Western railroads, on the ground that it violated the Anti-Trust Act of 1890 (POLITICAL SCIENCE QUARTERLY, V, 734–735). Decisions against the government had been rendered in the circuit court and in the circuit court of appeals. The supreme court, however, by five judges to four, reversed this action of the lower courts. The defendant was an association of railway companies for the purpose of fixing and maintaining uniform freight rates within a defined territory by joint agreement and joint regulation. It was held in the opinion of the court (1) that the terms of the Anti-Trust Act covered combinations among railroads as well as among trade and manufacturing corporations; (2) that all combinations in restraint of trade or commerce were made illegal by the act, whether the restraint were reasonable or unreasonable; and (3) that the agreement in question necessarily worked in restraint of trade or commerce, and could therefore be dissolved by the injunction that had been applied for. The unexpectedly wide scope given to the Anti-Trust Act by the court, contrary to the common belief that the rate-fixing associations among railroads were permitted by provisions of the Interstate Commerce Act that had not been superseded by the later law, caused a great sensation; and the decision was at once followed by the dissolution of the Western Freight Association, which regulated a huge volume of business on lines centering at Chicago. The Joint Traffic Association, through which the business of the trunk lines from New York to the West is regulated, also took steps to adjust itself to the new situation, but finally decided to maintain its regular working. Certain *dicta* in the court's opinion indicated, moreover, a very hostile attitude toward trade and manufacturing combinations that drive small dealers out of business or force them to become mere employees of the great capitalists. It was probably because of these *dicta* that the American Tobacco Company announced the cancellation of its "factors' agreements," and the "Sugar Trust" indicated a disposition to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

do the same. (The "factor's agreement" is a contract by which the retail dealer, on penalty of having his supply cut off, binds himself to conform to the requirements of the "trust" as to origin and price of a commodity in which he deals, *e.g.*, sugar or tobacco.) A motion for a rehearing of the Freight Association case was made in April, but the court laid the subject over till autumn.

**VARIOUS STATE LEGISLATION.** — The results of the voting on important **amendments to state constitutions** in the November elections were as follows: Repeal of prohibition article, adopted by South Dakota; woman suffrage rejected by California, adopted by Idaho; requirement of naturalization, in case of foreign-born persons, three months before voting, adopted by Minnesota, rejected by Montana; requirement of declaration of intention six months before voting, adopted by Texas; permission to employ other methods of voting, if secret, than ballot (voting machines), adopted by California, rejected by Nebraska. Substitution of biennial for annual elections of state executive and legislature, rejected by Massachusetts; prohibition of trusts and combinations, adopted by South Dakota; permission of progression and other special modes in taxation of sleeping-car, telegraph, express and other companies, adopted by Minnesota: authorization of civil verdict by five-sixths of jury, rejected by Nebraska; authorization of cities to frame their own charters, adopted by Minnesota. Of the thirty-nine **state legislatures** which meet biennially, over thirty were in session during the past winter. The output of important legislation, however, was not large. The treatment of trusts is mentioned elsewhere. Laws requiring railroads to carry bicycles as baggage, and regulating or prohibiting the sale of cigarettes were passed in many states. In West Virginia, however, an anti-cigarette law was declared unconstitutional by the supreme court. **Kansas**, in which the Populists controlled both houses of the legislature, was expected to produce radical laws, but the expectations were not fulfilled. During the winter the state authorities undertook to confiscate the real estate of the Atchison, Topeka and Santa Fé Railway under the law forbidding aliens to hold land. The attempt failed, owing to a discovery that the law had never been legally enacted; an effort to remedy this defect failed in the legislature. — In **South Carolina**, where radical legislation is also to be expected, the work of the session included a graduated income tax, a graduated license tax on insurance companies, and a requirement that every foreign insurance company, in order to do business in the state, should deposit with the government $10,000 in securities, to cover any judgment that might be rendered against it. — Idaho enacted a law prohibiting the employment of aliens by municipal or other corporations; Colorado abolished capital punishment; South Dakota adopted local option and high license in liquor dealing; and in North Dakota a constitutional amendment was submitted to the people looking to an educational qualification for the suffrage and to compulsory voting. In Missouri a compulsory voting law was declared unconstitutional by the supreme court. — In **New York**, the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

large Republican majority, working under the leadership of United States Senator Platt, attracted much attention by the machine-like character of its operations. The completed legislation included amendments to the Raines Liquor-Tax Law (see this RECORD for June, 1896, p. 377) designed to prevent evasion under the exceptions in favor of hotels and clubs; a Graduated Inheritance-Tax Bill, imposing rates that in some cases rise as high as fifteen per cent; and a Civil-Service Bill, designed to restrict the competitive system of appointment, and providing that "fitness," as determined through examination by the appointing officer, shall have equal weight with "merit," as determined by the existing civil-service boards. An important decision on **the law of labor** was rendered by the New York State Court of Appeals early in March, in the case of Curran *vs.* Galen. A workman who refused to join a labor union was at the instance of the union discharged by his employer, and was prevented from getting work elsewhere. Having sued the officers of the union for damages, on the ground that they had conspired to deprive him of a livelihood, they set up the defense that his discharge had been due to a lawful contract between his employer and the union, under which the former undertook not to keep in his employ any one who was not or did not become a member of the union. But the court declared that such a contract was unlawful — in "conflict with that principle of public policy which prohibits monopolies and exclusive privileges." The defense set up, therefore, was held to be insufficient.

**MUNICIPAL GOVERNMENT.** — The charter for the **Greater New York** was completed by the commission appointed to draft it and was submitted to the legislature February 19. It embodied a complete and complicated scheme for the entire government of the new municipality. Legislation was entrusted to a bicameral assembly; the executive power was assigned to an elective mayor, with control over the appointment of subordinates; the levy and expenditure of money was put in the hands of a board of high executive officials. The draft was adopted by the legislature without important modification, and was approved by the mayors of all the municipalities concerned, save New York City. Mayor Strong, of that city, disapproved the project, April 9, on account of certain provisions which had received very general condemnation from friends of municipal reform. The objectionable features were: the bicameral legislature instead of a single chamber; the bipartisan police commission of four members, instead of a single-headed department; and the restriction of the mayor's power to remove his subordinates to the first six months of his term. No effect was produced by the mayor's disapproval, and the bill, having been passed again by large majorities, became law. — In **Baltimore** the mayor's controversy with the council over the appointment of officers (see this RECORD for June, 1896, p. 380) was terminated by a judicial decision, November 19, sustaining him at every point and declaring illegal the council's acts depriving him of the power of appointment. — The common council of Boston passed an ordinance, January 28, establishing a municipal printing plant.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

**LYNCH LAW.** — The number of incidents that have come to the notice of the compiler is thirty-three — all in the former slave states. Of the victims twenty-nine were negroes; and the offense charged was actual or attempted rape of a white woman in seventeen cases, and murder in most of the others. The state authorities have manifested in most cases great activity in thwarting and in prosecuting the lynchers, but difficulties in the way of success are often insuperable. An illustration of the obstacles that have to be overcome is found in the fact that a Mississippi farmer who turned state's evidence in a lynching case last year was assassinated in his bedroom in March. Light was thrown on the uncertainty of reports on lynching affairs by the discovery in January of a negro, who, with a fellow-criminal, was supposed to have been lynched in Alabama, in 1894. The two had been taken from the officers of the law by a mob, but, it appears, had escaped from their captors. As the negroes were under legal sentence of life imprisonment, they naturally did not reveal the truth; and as the governor offered large rewards for the members of the mob, the latter failed to make public all they knew. In this case "lost in the woods" — the euphemism commonly employed in the South to describe the fate of a negro seized by a mob — expressed the literal truth.

## II. FOREIGN NATIONS.

**TURKEY AND THE CHRISTIANS.** — The affairs of the Ottoman power have continued throughout the period under review to form the chief point of international interest. For the first three months the questions involved in the Armenian massacres were most conspicuous; during the last three months the situation in Crete and Greece took precedence. In respect to **the Armenians**, the diplomatic pressure exerted by the powers resulted in a general amnesty, December 22, to both Christians and Mohammedans who had been concerned in the disturbances. The efforts to secure the operation of the administrative reforms which the Sultan had promised were less successful. Orders issued by the Porte for putting into effect desired changes were followed by no results whatever. Toward the end of November, however, the Russian Czar, who had up to that point opposed all threats of force by the powers, gave way to the extent of agreeing to consider methods of coercion in case reforms demanded by all the powers could be secured in no other way. This attitude removed the most serious obstacle in the way of effective pressure, and was reported to have made a profound impression on the Sultan. The ambassadors of the powers at once proceeded, in a series of conferences, to concert a precise plan of operations. This task was not completed till February 8, when the result was submitted to the respective governments. At just that time, however, the Cretan question assumed a critical character; and, in the developments which followed, the other matter, so far as public information is concerned,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

disappeared from view. A fresh outburst of fanaticism, in the middle of March, resulted in the killing of from fifty to a hundred Armenians at Tokat, in Asia Minor, and the pillage of the Armenian quarter. This was followed by the usual "vigorous protests" by the powers, and a special commission was sent out by the Porte to investigate the responsibility of the Turkish officials for the trouble. — **The crisis in Crete** was precipitated by an outbreak of hostilities at Canea, February 5, between Mohammedans and Christians. The vaunted reforms which the powers had undertaken to secure (see last RECORD) had not gone fully into effect, and the conflict seems to have been merely a renewal of the old friction which the reforms had been intended to remove. The outbreak was followed at once by fighting from one end of the island to the other, on the familiar lines — the Mohammedans, supported by the Turkish garrisons, holding the coast towns, and the Christians holding the open hill country. In Greece sympathy for the Christians took at once a very demonstrative form, and the government promptly dispatched a flotilla to the scene of the disturbances, with arms and provisions for the insurgents. On February 14, a Greek war-ship fired upon a Turkish transport that was conveying aid to the government forces. In response to the protests addressed to the Greek government, at the instance of the Sultan, by the powers, the government proclaimed its resolution to protect the Christians in Crete, and for that purpose to occupy the island. On the following day a force of 1500 Greek troops, dispatched from Athens, landed near Canea. At the same time the war-ships of the powers, which had assembled in large numbers, landed marines in the town to protect it. Similar action was taken at the other towns which the Christian insurgents were threatening; and on several occasions the foreign vessels were obliged to open fire on the assailants to make them keep at a proper distance. Neither Cretans nor Greeks, however, attacked the foreign troops. Throughout western Europe much popular sympathy for the cause of the Christians in Crete was manifested, and much popular applause was bestowed on the Greeks. On February 22 it was announced, however, by the governments of Great Britain, France and Germany, in reply to questions in the respective legislatures, that the six powers were resolved to act together in pacifying Crete, and that the intervention of Greece would not be tolerated. The scheme of the powers was embodied in collective notes presented to the Greek and Turkish governments on March 2. It provided for administrative autonomy for Crete, under the suzerainty of the Porte, and declared that annexation to Greece was out of the question "under present circumstances"; the Greek government was accordingly ordered to withdraw its military and naval forces from the island within six days under penalty of compulsion. The Porte promptly signified acquiescence in the plan of the powers. Greece, however, declared that the scheme of autonomy "unhappily cannot correspond to the noble intentions that inspired it"; pleaded for the annexation of the island; and declined to withdraw her land

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

forces, on the ground that that would be to "abandon the Cretan people to the mercy of Mussulman fanaticism and the Turkish army." She asked, finally, that the choice of government be left to the people of the island. This practical defiance of the powers was followed, after some days of delay, by the announcement of a blockade of the Island of Crete by the allied fleets, and the reënforcement of the occupying marines by infantry. The blockade was formally proclaimed on March 16, and became operative on the 21st. The Greek war-ships withdrew; but the land force intrenched itself in a strong position and continued to give moral, if not physical, support to the insurgents. The latter paid no attention to the project of autonomy, but kept up their operations against the Turkish garrisons, whom the allied fleets were called upon repeatedly to defend. It was announced by the admirals that the blockade would last only until the Greek force withdrew from the island; and it was understood that the withdrawal of the Turkish troops would follow that of the Greeks. A proposition to blockade the ports of Greece was said to have been urged very strongly by the German Emperor; but the British government, probably fearing public sentiment at home, seems to have withheld its consent to such action. — **War between Greece and Turkey** broke out in connection with the situation in Crete. While that situation was developing both nations had been calling out their reserves and concentrating armies on the Thessalian frontier, with a view to any contingencies. The war fever ran high in Greece; and as the forces confronted each other, the chances of a collision became very great. On April 5 it was announced that the powers had made to Greece and Turkey a joint declaration that, in case of a conflict, the aggressor would be held responsible for all consequences, and in no case would be permitted to derive any advantage from the struggle. Fighting was actually begun on the 9th, by a body of Greek irregulars, who, under the auspices of the National League, a patriotic society, crossed into Macedonia and attacked a Turkish position. The regular Greek officers disavowed this movement, and were said to have exerted themselves vigorously to prevent it. Fighting continued, however, at various points; and on April 18, the Porte, on the ground that the aggressions of the irregulars had been supported by the Greek regular army, broke off diplomatic relations and ordered the Turkish army to cross the frontier. Hard fighting began at once at all the passes through the mountains that constitute the boundary. The Turks were superior in numbers and forced the Greeks steadily back till on the 24th Larissa, the base of the Greek position, was captured. A new position was then taken by the defeated army at Pharsalos, on the southern border of the Thessalian plain, but on May 6 the Turks, after a general engagement, drove the Greeks from this line also. Meanwhile the Greek fleet had bombarded several towns along the coast of the Gulf of Salonica, but without important results; and on the western coast of Epirus, Greek forces, after making some progress in Turkish territory and threatening Janina,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

were driven back to their original positions. The reverses in the field provoked great popular irritation at Athens. The Delyannis cabinet fell April 29, and was succeeded by a ministry headed by M. Ralli. Demonstrations of hostility to the king and royal family were frequent, and there was apparently danger of a revolution. The great powers were known to be in consultation over the situation, but no steps toward intervention were made public.

**GREAT BRITAIN AND IRELAND.** — The usual pre-Parliamentary political discussions during November and December turned chiefly on the question of **Irish financial relations.** On the basis of the royal commission's report, noticed in the last RECORD, a very active agitation developed in Ireland for a readjustment of taxation in favor of that part of the United Kingdom. Home Rulers and Unionists, noble landlords and dynamiters, united in supporting the demand and in denouncing the injustice of the existing system. On the other side, it was maintained that no grievance really existed; that the royal commission had been "packed" in favor of Home Rule and had reported in that sense; that there was no justification for treating Ireland as a distinct taxable entity; and that if Irishmen actually paid disproportionate taxes, it was merely a result of their greater consumption of whiskey. The question seemed at one time likely to play a prominent part in the work of Parliament, but the government avoided this by announcing, at the opening of the session, that a new royal commission would be appointed to deal with the matter, and especially to consider the extent to which the greater relative outlay on the government of Ireland could operate as a set-off against the greater contribution. A short debate on this subject in the Commons at the end of March was followed by a vote of 317 to 157 in favor of the government. — **Parliament** assembled January 19. The Queen's Speech dealt largely with foreign and colonial affairs, and declared that the present condition of the world required a continuation of "prudent foresight" in providing for the defense of the empire. Chief among the measures announced was that dealing with primary education, and especially with the voluntary schools. The Voluntary Schools Bill, as explained by Mr. Balfour on February 1, avoided the complexity of the bill which had failed at the preceding session, and provided merely that such schools should be exempted from the payment of rates, and should be further aided by an allotment of 5*s.* per pupil from the exchequer. The distribution of the money was to be directed by the Education Board, in coöperation with associations organized by the schools according to sect. The opposition to this bill was not very serious, and it passed in the Commons, March 25, by a majority of 200. In accordance with a program previously announced, Mr. Balfour introduced in April a bill giving aid to necessitous board schools also. The omission of such aid had been the chief ground for opposition to the earlier measure. The budget presented by Sir Michael Hicks-Beach, April 29, indicated an unusually prosperous year. A surplus of £2,473,000 was revealed, but no reduction of taxation

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

was proposed. Among the additional expenditures resolved upon was £200,000 for an increase of the British garrison in South Africa. — Foreign affairs gave rise to the most animated **party contests** of the session. The Liberals in general, and the more radical wing in particular, assumed a very critical attitude toward the government's Cretan policy. Lord Salisbury's adherence to "the European concert" was assailed as a mere submission to Russian lead, and the use of force against the Christians in Crete was violently denounced. The Earl of Kimberley, who had been chosen at the opening of the session to succeed Lord Rosebery as Liberal leader in the upper house, announced definitely his repudiation of the "integrity of the Ottoman Empire" as a principle of British policy. The trend of Liberal thought, both in and out of Parliament, was accentuated by a letter of Mr. Gladstone, published March 18, in which he eloquently advocated the cause of Greece, and raged against the whole course of the "European concert" in dealing with Turkey. As to the government, Lord Salisbury confessed at the opening of the session that in sustaining the Porte against the projects of Nicholas I in the Crimean days, Great Britain had "put its money on the wrong horse"; but he insisted that the only way to avoid woes now, as great as those of the Crimea, was to act in coöperation with the other powers. When the Cretan difficulty arose, the government's course was justified on the same reasoning, as well as on the necessity of protecting the Moslems in Crete from massacre by the Christians. In the House of Commons Sir William Harcourt, leading the Liberals, harassed the government severely on several occasions, but declined Mr. Balfour's challenge to move a vote of censure. — The Irish Parliamentary Party manifested throughout the session the usual factional differences. An attempt in March to bring together on the financial issue all the representatives of Ireland, including Conservatives, proved abortive. It was considered significant that at the annual conference of the National Liberal Federation at Norwich, in March, the program contained no specific reference to Irish Home Rule. — The parliamentary committee to investigate the Transvaal raid began its work in February. Mr. Cecil Rhodes came from Africa to give testimony. He admitted that the project practically originated with himself, and that it was intended to extend the British Empire. It was justified, he believed, by the treatment of the *uitlanders* by the Boers. The inquiry had not ended at the close of this RECORD.

**THE BRITISH COLONIES AND INDIA.** — In **Canada** the settlement of the long-pending Manitoba school question was announced in November. Prime Ministers Laurier, of the Dominion, and Greenaway, of Manitoba, concluded an agreement under which the schools were all to be subject to the control of the provincial authorities, to be held to a uniform standard of efficiency and to use the same text-books. Religious teaching for a half hour daily by any Christian clergyman was provided for, when demanded by a given number of parents, but no child was to be obliged,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

without his parents' consent, to attend this teaching. Where forty children in a city or town, or twenty-five in the country, should require either a Catholic or a non-Catholic teacher, the demand was to be granted, provided that the non-religious qualifications of all teachers should be the same. This agreement failed to satisfy many of the leading Catholic clergy; it was ratified, however, by the Manitoba legislature, March 25, and went into effect as law. On that day the Dominion Parliament opened at Ottawa. The chief measures announced in the governor-general's speech were a revision of the tariff and a change in the franchise law so as to leave the regulation of the suffrage to the various provinces. The tariff bill, as published in April, embodied a general reduction of duties, the establishment of preferential rates for British goods and a very decided discrimination against products of the United States, subject, however, as the finance minister declared, to modification in case the burdens on Canadian products were removed from the Dingley Bill. — In **the Australian colonies** the legislative sessions of the autumn closed without the enactment of the radical measures that were proposed and in some cases passed by the lower houses. In both Victoria and New South Wales referendum bills were killed in the Legislative Councils. The movement for federation, on the other hand, made very decided progress. During the winter West Australia passed an enabling act for the constitutional convention, leaving only Queensland standing aloof from the scheme. Early in March delegates to the convention were elected — ten in each of the five colonies participating, and on the 22d the convention assembled at Adelaide. A series of resolutions was at once submitted by a delegate from New South Wales and soon adopted, proposing principles on which the constitution should be framed. These included the retention by the respective colonies of powers not delegated to a central organ; the exclusive control of customs and excise taxes, and of military and naval affairs, by the federal parliament; and absolute freedom of trade among the federated colonies. Subject to these conditions, it was resolved to establish a bicameral legislature, a federal supreme court, and an executive consisting of a governor-general appointed by the queen and a ministry responsible to the legislature. The convention's work had not been completed at the close of this RECORD. — The stress of **famine and plague in India** has absorbed the energies of the political authorities. Severe drought in large districts made famine probable by the end of the summer, and the pressure began to be felt in October. Active measures for dealing with the situation were begun by the Indian government in November, and by the middle of March the number of persons receiving relief had risen to over 3,000,000. Public works on an extensive scale were carried on to give employment. Private aid was enlisted throughout the empire, and huge funds were raised by subscription. The Mansion-House fund alone, managed by the Lord Mayor of London, had reached in April £500,000. Non-British lands also contributed largely. With the maturing of crops in the spring some improvement was manifest in the general situation, but it was

LICENSED TO UNZ-ORG
ELECTRONIC REPRODUCTION PROHIBITED

anticipated that the distress would be acute in some regions until near the end of the year. The bubonic plague made its appearance in the autumn at Bombay and in some other parts of western India. Its ravages were confined mostly to the natives, and the efforts of the government to stamp it out met with almost insuperable obstacles in the unsanitary habits and the social and religious prejudices of the people. By the end of the winter, however, a system of control had been put in operation, sometimes by the strong hand, and the danger of a very wide spread of the pestilence had been greatly reduced. The most decisive measure was an act authorizing the governor-general to prohibit infected persons from leaving their province. This was adopted late in February, as the fear of consequences if Mohammedan pilgrims were detained was dominant at first. Even the Mohammedans, however, later became reconciled to the system.

**FRANCE.** — The course of political life has been exceptionally placid. The Chambers have been in session throughout the period under review, except for a recess at the holidays. M. Méline has maintained his position at the head of the government without serious difficulty. Radical attacks by interpellation have been frequent but unavailing. In March the Chamber of Deputies took a definite step toward restraint of obstruction by adopting a provisional rule that interpellations can be made only on Saturdays. The ministry received a slight check by the passage, November 17, of a bill simplifying the method of electing senators. Though its consideration was opposed by the government, the bill passed, by 297 to 238; a further motion requiring the government to press the measure in the Senate was voted down, 311 to 241, and accordingly no change in ministry occurred. — Most of the parliament's attention was devoted to the budget for 1897, which was finally voted on March 29. Of other legislation the most important actually effected was that increasing the export bounties on beet sugar, to meet similar action by Germany and Austria-Hungary. — The elections for one-third of the senators, held January 3, resulted in a triumph for the Moderate Republicans. Where the Radicals opposed the Moderate candidates, the opposition in nearly all cases failed. — The Panama scandal came into some prominence at the end of March through a confession made by Arton, the lobbyist chiefly concerned in the bribery. Proceedings were instituted against several deputies and senators who were implicated by Arton's exposure, but no convictions followed.

**GERMANY. — The work of the Reichstag** has gone very little beyond the discussion of the budget and other routine business. Even in this the inability of the government to secure a certain majority has been very clearly demonstrated. In March, in connection with the naval estimates, the minister of marine brought forward a scheme for greatly increasing the navy, and demanded a large appropriation to put the scheme in operation. The project was understood to have emanated from the emperor, but the Reichstag refused, March 20, by 204 to 143, to grant the desired money. This vote was followed by the retirement of Admiral Hollman, the minister of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

marine. Conservatives and National Liberals supported the government, but the Clericals decided the matter against it. Another project that failed was the amendment of judicial procedure, insuring, among other things, a right of appeal in criminal cases and compensation for persons unjustly accused. The Reichstag inserted in the bill an amendment providing that editors need not reveal the names of writers in their papers. The government resisted this amendment, and when it was adopted withdrew the bill. On the other hand, a private member's bill for the repeal of the Jesuit-Exclusion Law was passed, April 3, but with no hope of approval by the Bundesrath. In the middle of March the latter body adopted and sent to the Reichstag a bill to regulate emigration, which provided for a rigorous imperial supervision of companies and vessels engaged in forwarding emigrants, and was avowedly aimed at so controlling the destination of the emigrants as to promote their highest welfare as well as the ultimate welfare of the German race as a whole. A new Code of Commerce, supplementing the Imperial Civil Code, was adopted by the Reichstag April 7, to go into effect with the Civil Code in 1900. — When, on January 1, **the new Bourse Law** (see last RECORD) went into effect, the produce exchanges at Berlin and other cities dissolved their organizations, but the members at once resumed business under other forms devised to evade the provisions of the law. The authorities claimed that the new associations were also subject to the law, but up to the close of this RECORD no definite step has been taken toward enforcing the legislation against them. — Certain phases of militarism have formed a prominent topic of public discussion during the period under review. Early in the autumn, at Carlsruhe, a young lieutenant named Brüsewitz, considering himself insulted by an artisan who brushed against him in a *café*, demanded an apology from the offender, and, when it was not forthcoming, run him through with a sword and killed him. The officer was tried by a military court and sentenced to dismissal from the army and four years' confinement in a fortress. Heated discussion in the press and in the Reichstag followed this incident, and the practice of duelling and the whole code of conduct among army officers was severely commented on. The emperor disapproved the court's disposition of the Brüsewitz case and ordered a new trial, which resulted in January in a sentence of the offender to imprisonment for three years. Meanwhile the emperor issued a decree, January 1, supplementary to existing regulations on courts of honor and duels among officers. To prevent duels more effectively, it was enjoined upon officers to end their quarrels by reconciliation, "so far as professional honor and good manners (*gute Sitten*) permit," and a procedure was laid down through which a council of honor should coöperate in effecting such reconciliation. It was made the duty of officers to lay their disputes before this council and to accept its decisions, subject to an appeal to a court of honor, whose judgment should be final. No definite penalty was prescribed, however, for a failure to conform to this method of settlement. In case a challenge should be given or accepted before or pending action of a coun-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cil of honor, the decree merely provided that the matter should be reported to the emperor. — **The Prussian Landtag** met November 20. A very favorable financial situation was revealed by the budget, which produced a good surplus instead of the expected deficit. The work of the session concerned chiefly routine matters.

**AUSTRIA-HUNGARY.** — The central point in Austrian politics has been the **elections for the Reichsrath** for the first time under the new electoral law. The old Reichsrath, after finishing routine business, was dissolved January 23, and the elections were ordered for March 4–15. The campaign and its results emphasized what recent events had clearly revealed — the wreck of the German-Liberal Party through the great strength of the anti-Semitic and Clerical movements. The German Liberals secured only seventy-seven members, as compared with one hundred and nine in the former house; the German Nationalists, recently split off from the Liberals, secured thirty-nine; the Czechs, sixty-three; and the Poles, fifty-nine. The anti-Semites and Christian Socialists made marked inroads on most of the national groups, and through the new *curia* the Social Democrats secured about a dozen seats. The new Reichsrath was opened, March 29, with a speech from the emperor which promised a large number of projects for social improvement, including an extension of the workingmen's insurance system. The chief item in the program of the session, however, was declared to be the ratification of the adjustment with Hungary. In connection with the efforts to form a majority under the new party conditions, the Badeni cabinet submitted its resignation to the emperor April 2; but the resignation was not accepted, and after an interval the ministry, having received a public assurance of the imperial favor, settled down to its work again. An imperial ordinance requiring a greater use of the Czechish language in official business in Bohemia was put in force in April, and was regarded as a concession designed to secure the support of the Young Czechs for the government. This ordinance was the basis for a motion, May 6, to impeach Prime Minister Badeni and other ministers for gross violation of their powers. The motion was voted down on the 8th by 203 to 163. — Dr. Lueger, the anti-Semite leader, having been elected burgomaster of Vienna, was this time confirmed by the emperor (*cf.* RECORD for June, 1896, p. 390).

**RUSSIA.** — The **financial condition** of the empire, as set forth by Minister Witte in January, was very prosperous. Though there was a deficit in 1896, the increases in revenue were so marked that in the ordinary budget a surplus was assured for 1897, due largely to the development of the trans-Siberian railway. An extraordinary expenditure of over 120,000,000 roubles was provided for, devoted altogether to railway construction; and this sum was to be met by the surplus in the ordinary revenue, together with drafts upon the treasury reserve. Preparations have been made for pressing forward work upon the 900 miles of railway through northern Manchuria, which, by permission of China, are to form the last link in the chain uniting European Russia with the Pacific. The finance minister announced

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

also that the arrangements for putting the monetary system on a gold basis were approaching completion. — On January 13 it was announced that Count Muravieff would succeed the deceased Prince Lobanoff as minister of foreign affairs. The leaning toward France previously displayed by the new minister caused for a time a panicky feeling in the German press. — An undercurrent of **discontent among the university students** throughout Russia has been manifested on two occasions in extensive public demonstrations. In Moscow, November 30, a large body of students took part in a public ceremony in memory of those killed in the disaster at the coronation of the Czar (see last RECORD), and indulged in manifestations of disrespect toward the authorities. Several hundred students were arrested, and the ringleaders were imprisoned. Thereupon demonstrations of sympathy for the prisoners were made on a large scale by the students at St. Petersburg, Kazan, Kieff and other university towns. In March occurred another outbreak, this time at Kazan, where the suicide of a woman student who was in prison as a political suspect was said by her fellows to have been caused by an attempt of an official to outrage her. On this occasion a thousand arrests were made. In April it was reported that the authorities had discovered the manifolding apparatus by which the appeals to the students and other seditious matter had been printed, with much evidence of a widespread revolutionary organization.

**ITALY. — A general election** has been the only incident of importance in the abnormally placid political life of Italy. The old parliament was in session from November 30 to January 21, and carried through certain legislation, chiefly of financial character. The treaty with France in reference to Tunis (see last RECORD) was ratified with little opposition. Dissolution of the Chamber followed the final adjournment. The elections took place March 21 and resulted in a sweeping victory for the government, the opposition securing only about 150 seats out of 500. The new parliament assembled April 5. In the king's speech a program of educational, judicial, administrative and social reform was announced, a maintenance of the *status quo* in Africa and a steady support of the concert of the powers in Eastern affairs. The assurance of an equilibrium in the budget was proclaimed with especial satisfaction. A test vote on an interpellation on foreign policy stood 278 for the ministry to 132 against. This seemed to point to a long lease of power for Premier Rudini. — On April 22 a lunatic attempted to stab King Humbert as the latter was driving in Rome, but the king received no injury.

**SPAIN AND HER COLONIES. — The situation in Cuba** at the close of this RECORD seemed on the whole more favorable to Spain than at any time since the outbreak of the insurrection. Financially the government was relieved of its immediate straits in November by the domestic loan then issued (see last RECORD). The opening of 250,000,000 pesetas of this loan to popular subscription on the 16th was the occasion of a great patriotic demonstration in the large cities, and the sum was subscribed for more

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

than twice over. It was reported in April, however, that the treasury was again in difficulty and that another loan was under negotiation. From a military point of view some progress has been made in breaking the insurgent power in Cuba, though nothing decisive has been effected. In Pinar del Rio General Weyler's expedition in force in November drove the insurgents to their mountain strongholds, and occupied the open country. Maceo, the insurgent commander, left the province early in December, and passed by boat around the *trocha* to the province of Havana. There he was killed in a skirmish on December 4. His successor in Pinar del Rio, General Rivera, was captured by the Spaniards March 28. The Cuban cause at that end of the island appears to have lost all important military cohesion, though large Spanish forces are necessary to hold the province against guerrilla uprisings. In January General Weyler proceeded eastward to drive the insurgents systematically out of the provinces of Havana, Matanzas and Santa Clara. His operations have not been successful in bringing the insurgents to a pitched battle, and the campaign has consisted only in a series of petty engagements in which success has been about equally divided. From their mountain strongholds the Cubans harass all parts of the central provinces and destroy the sugar estates which obey the governor-general's orders to grind cane; while the Spanish columns devastate those which do not obey. The financial and economic condition of the island remains as bad as possible. The forced circulation of paper money has produced serious disorders in some of the towns. — **In the Philippines** the fighting in November and December went against the Spaniards; but toward the end of March the chief strongholds of the insurgents were, after a long siege, carried by the government troops, and the end of the uprising became merely a matter of time. — A large degree of **administrative autonomy for Puerto Rico and Cuba**, which had been voted by the Cortes in March, 1895, but withheld from operation on account of the rebellion, was proclaimed operative in the former province by royal decree January 1. On February 6 the reforms applicable to Cuba were published, with a provision that they would be put in force when order should be restored and every attempt at separation should have ceased. The scheme gives to municipalities the choice of their own officers and control of local taxes and of education; establishes for the island an administrative council of thirty-five members (twenty-one of whom are elective by the people), with control of the Cuban finances; provides for the preferential treatment of Spanish products in Cuban tariffs; and requires that the higher administrative and judicial officers, appointed by the governor-general, shall be either natives of Cuba, or Spaniards of two years' residence therein. There is careful provision in various parts of the project for authority in the governor-general to maintain the paramount rights of Spain as against any tendency in the local organs to disregard them. This project of reform was looked upon as designed to comply with the suggestion of President Cleveland's message as to conciliation (*supra*, p. 354). The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

insurgent leaders promptly declared, however, that it was insincere and that in no case would they accept it. In April General Weyler notified the home government that the western and central provinces of Cuba were sufficiently pacified, and accordingly, on the 29th, a royal decree was signed directing the new system to be put into operation in those districts.

**MINOR EUROPEAN STATES.** — The relations between **Norway and Sweden** have manifested no evidence of improvement in the latest period of political activity. It was announced in December that the negotiations for a renewal of the commercial and shipping treaty between the two lands had failed. The Swedish parliament formally denounced the treaty during the winter, and in July, 1897, its provisions go out of operation. The severance of union in this respect does not promise success for the joint commission which is laboring to devise a scheme for strengthening the bonds between the two kingdoms. — In **Denmark** a conflict developed in March, between the ministry and the Folkething over the finances, and between the ministry and the Landsthing over a radical project for agrarian reform. A situation arose like that which was terminated in 1894 (*cf.* this RECORD for June, 1894) and resort had to be made to a provisional budget. — In **Switzerland** a project of law establishing a national bank, with exclusive power of issuing notes, was rejected on referendum, February 28, by 247,000 to 192,000. The attention of the governmental bodies has been chiefly concerned with projects for old-age and accident insurance, for the unifying of civil and criminal law, and for the nationalization of the chief railway systems. A plan for the last-named purpose was presented by the Bundesrath to the legislature in March. — **Portugal** experienced a ministerial crisis at the beginning of February, caused by financial questions. The Robeiro cabinet was supplanted by one presided over by Senhor Luciano de Castro. — In **the Danubian states** political life has been without incidents of great importance. In Bulgaria a new Sobranje was elected in November, with little opposition to the government's candidates, and the work of the session that began in December was chiefly routine. The war between Greece and Turkey excited no demonstrations in any of the Danubian States. Possibly the situation brought, more promptly than would otherwise have happened, the gratification of certain demands of Bulgaria and Servia as to ecclesiastics in Macedonia. These states, together with Roumania and Montenegro, received in April the official thanks of Russia and Austria for their correct conduct. The trial of three persons accused of complicity in the murder of Stambouloff in 1895 resulted, December 30, in the conviction of two of them and their sentence to three years' imprisonment. In Servia a cabinet crisis at the end of December resulted in the retirement of the Novakovitch ministry and the accession of one under the presidency of M. Simitch. The change was declared to have only internal significance. Roumania's legislature opened its session November 27 with an address from the throne declaring both internal and external conditions to be most satisfactory. A cabinet crisis soon followed, due mainly to personal and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

factional causes. Premier Stourdza retired in favor of M. Aurelian; but in April the latter in turn was forced out, and the Stourdza cabinet resumed power.

**AFRICA.** — Events in the sphere of British interests have attracted most attention in connection with this continent. As to the **expenses of the Dongola expedition** (*cf.* last RECORD) the court of appeals at Alexandria, on December 2, sustained the lower court's decision that the application of funds to that purpose by the commissioners of the public debt was illegal, and required that the money taken from the reserve should be returned. Great Britain promptly agreed to lend Egypt the amount necessary to satisfy this requirement; and it was pointed out in both Great Britain and France that the former's hold on Egypt was rather strengthened by the financial relation thus established. To that extent the incident as a whole presents a French legal and a British political victory. The revenue of Egypt for 1896 was exceptionally large, and the surplus reserve was raised to £6,444,000. — Two little **wars in the Niger region** have increased British power there. For massacring a peaceful trading expedition the king of Benin was conquered and dethroned in February, and his possessions near the Niger delta annexed to the British Coast Protectorate. At the same time the Royal Niger Company's forces were engaged some hundreds of miles up the river in a campaign which resulted in the overthrow of the powerful Mohammedan state of Nupé and the extension of the company's control over its territory. — By decree of the sultan in April the legal *status* of slavery was abolished in Zanzibar. This act gave great satisfaction to a public sentiment in England that has been very active ever since Zanzibar became a British protectorate. — **The situation in the Transvaal** has been characterized by many manifestations of suspicion as to British designs on the country. The great popular demonstrations in the Cape Colony in favor of Cecil Rhodes, when he passed through on his way to England, served to confirm the Boers in their fear of aggression. An Alien Immigration Act passed by the Volksraad in November was complained of by the British government as in conflict with treaty obligations. The act required that all aliens entering the Transvaal should furnish guaranties of ability to support themselves, and should be equipped with passports renewable every three months. The Boers declared this to be a necessary police measure in view of the great number of laborers attracted by the mining industry. A decision of the supreme court at the end of January caused trouble between the Volksraad and the judiciary. The court held valid a mining claim that had been set aside by executive order, confirmed by resolution of the Volksraad, the judges holding that under the constitution private property could not be taken without compensation. The Volksraad thereupon passed a bill, in February, expressly denying to the court the right to overrule acts of the legislature as unconstitutional, and modifying the constitution and tenure of the court. The judges, when called upon to conform to this act, agreed only upon the understanding that the more offensive clauses should be repealed

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and the independence of the court be left intact. It was reported that the British government complained of the Volksraad's proceeding as endangering the property rights of *uitlanders*. During the winter the Transvaal government submitted a claim against Great Britain of £1,677,938 for damage inflicted by the Jameson raid. Throughout the spring the construction of fortifications and the importation of military stores were actively carried on by the Transvaal government, while a visit of President Kruger to the Orange River Free State was supposed to signify an attempt to form an alliance. The British government kept up an animated protest against the Transvaal's acts, as tending to derogate from British supremacy in South Africa. In April additional troops were sent to the Cape Colony, and on the 22d a fleet of eight war-ships appeared in Delagoa Bay. This demonstration, taken in connection with declarations by Mr. Chamberlain, the Colonial Secretary at London, that British supremacy would be maintained at all hazards, increased the general tension. — The relinquishment by Italy of her protectorate over **Abyssinia** left King Menelik, as master of his own foreign relations, an object of much interest to the British and French governments. A French mission to the Abyssinian capital started in November and by spring had concluded a commercial convention and was said to be negotiating certain political relations. In March a British envoy proceeded to Abyssinia, to secure the regulation of territorial questions concerning the upper Nile region. An Italian garrison has remained in possession of Kassala, but avowedly only to hold the Dervishes in check on behalf of British interests in Egypt. — The French in **Madagascar** have, after considerable resistance by native tribes, established their power in effective form. Slavery has been abolished and the educational system put on a sound basis. At the beginning of March the Hova queen, Ranavalona, who had been allowed to retain a nominal authority, was finally deposed and banished to the Island of Réunion.

**THE ORIENT.** — The political life of **Japan** has been relatively peaceful. In the parliamentary session which opened December 22 the most important legislation effected was that establishing a gold standard for the currency. For the silver money was substituted a gold coinage at the ratio of 32½ to 1. Silver coins were limited in legal-tender character. This act was passed in March. A bill in reference to freedom of the press was brought forward by the government, but its fate was still undecided at the close of this RECORD. It provided for a considerable limitation of the government's power to suspend publication of newspapers, and for judicial process in all save a limited range of offenses. The death of the crown prince of Japan was announced in March. — The terms of a treaty concluded at the end of September, if correctly reported, have greatly enhanced the **influence of Russia in China**. The Russians secured the right to run 900 miles of railway, in completion of their trans-Siberian line, through Chinese Manchuria, and in addition to build a line, if China should not decide to do it, connecting this system with Moukden and Port Arthur. China reserved

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the right to purchase the lines at the end of thirty years, but conceded to Russia in the meantime the right to maintain troops at important points to protect the lines. An arrangement was also said to have been embodied in the treaty by which China, in return for a guaranty of Port Arthur and other seaports against foreign powers, assured Russia of the use of those positions for military and naval purposes in case of need. — **The situation in Corea** has been cleared up by the publication of a treaty between Russia and Japan, under which both agreed to leave to the king full liberty of action in both foreign and domestic policy. For the maintenance of order pending the organization of an adequate native military and police force, each power left a small military detachment in the country, with a pledge to withdraw it when order should be entirely restored. In February the Corean king returned to his palace from the Russian embassy, where he had taken refuge a year before (see this RECORD for June, 1896).

**LATIN AMERICA.** — **Brazil and Uruguay** suffered in the latter part of the winter and in the spring from insurrectionary disturbances. In the former state, bands of so-called "fanatics" — persons dissatisfied with the republic on religious and political grounds — gave trouble throughout the winter, and early in March inflicted a severe defeat on a military force sent against their chief stronghold in the state of Bahia. Serious military preparations were then made by the government, but the issue has not yet been determined. In Uruguay an important rebellion, which seems to have had little basis beyond personal ambition, had resulted by April in the destruction of the government's authority in the eastern half of the republic. Montevideo was declared under state of siege at the beginning of March. — In **Chili** the passions of the close presidential election noticed in the last RECORD manifested themselves in the session of the Congress in November. President Errazuriz, in adopting a concessive policy toward the Liberals, gave offense to his own party. A cabinet crisis was forced and a change of ministry resulted, the new body being composed entirely of Liberals. Conservative hostility to the president ran very high. — At the beginning of March diplomatic relations between Venezuela and Great Britain were formally resumed. The indemnity for the Uruan affair was paid by Venezuela in January. — The government of the "**Greater Republic of Central America**," provided for by the Amapala convention (see this RECORD for December, 1895), went into operation as between Honduras, Salvador and Nicaragua in 1896. All foreign relations were taken charge of by the diet, a body composed of one delegate from each state, and on December 23 the new federation was formally recognized by President Cleveland through the reception of its diplomatic agent at Washington.

WM. A. DUNNING.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED